NOTE

This Microfiche meets the quality requirements of the American National Standard for Microfiche of Documents (ANSI PH5.9-1975). However, because of imperfections in the document from which it was made, it contains images that are illegible or difficult to read. The source document for this microfiche is the best copy that could be obtained prior to filming.

Congressional Information Service, Inc.
Washington, D.C.

CIS

LABOR MANAGEMENT RACKETEERING ACT OF 1981

HEARING

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON

LABOR AND HUMAN RESOURCES

UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 1785

TO INCREASE THE PENALTIES FOR VIOLATIONS OF THE TAFT-HARTLEY ACT, TO PROHIBIT PERSONS, UPON THEIR CONVICTIONS OF CERTAIN CRIMES, FROM HOLDING OFFICES IN OR CERTAIN POSITIONS RELATED TO LABOR ORGANIZATIONS AND EMPLOYEE BENEFIT PLANS, AND TO CLARIFY CERTAIN RESPONSIBILITIES OF THE DEPARTMENT OF LABOR

FEBRUARY 3, 1982

Printed for the use of the Committee on Labor and Human Resources

U.S. GOVERNMENT PRINTING OFFICE
90-945 O WASHINGTON : 1982

S541-76

COMMITTEE ON LABOR AND HUMAN RESOURCES

ORRIN G. HATCH, Utah, *Chairman*

ROBERT T. STAFFORD, Vermont
DAN QUAYLE, Indiana
PAULA HAWKINS, Florida
DON NICKLES, Oklahoma
LOWELL P. WEICKER, Jr., Connecticut
GORDON J. HUMPHREY, New Hampshire
JEREMIAH DENTON, Alabama
JOHN P. EAST, North Carolina

EDWARD M. KENNEDY, Massachusetts
JENNINGS RANDOLPH, West Virginia
HARRISON A. WILLIAMS, Jr., New Jersey
CLAIBORNE PELL, Rhode Island
THOMAS F. EAGLETON, Missouri
DONALD W. RIEGLE, Jr., Michigan
HOWARD M. METZENBAUM, Ohio

George W. Pritts, Jr., *Chief Counsel*
Renn M. Patch, *Staff Director and General Counsel*
Lawrence C. Horowitz, M.D., *Minority Staff Director*

Subcommittee on Labor

DON NICKLES, Oklahoma, *Chairman*

ORRIN G. HATCH, Utah
JOHN P. EAST, North Carolina
ROBERT T. STAFFORD, Vermont
DAN QUAYLE, Indiana
PAULA HAWKINS, Florida

HARRISON A. WILLIAMS, Jr., New Jersey
EDWARD M. KENNEDY, Massachusetts
JENNINGS RANDOLPH, West Virginia
DONALD W. RIEGLE, Jr., Michigan

Richard C. Lawson,, *Cocounsel*
Charles T. Carroll, Jr., *Cocounsel*
Gerald B. Lindrew, *Minority Counsel*

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

WEDNESDAY, FEBRUARY 3, 1982

Page

Rudman, Hon. Warren, a U.S. Senator from the State of New Hampshire 4

Nunn, Hon. Sam, a U.S. Senator from the State of Georgia 6

Ryan, T. Timothy, Solicitor, Department of Labor 40

Jensen, D. Lowell, Assistant Attorney General, Criminal Division, Department of Justice, accompanied by David Margolis, Chief of Organized Crime and Racketeering Section, Criminal Division 64

STATEMENTS

Donovan, Hon. Raymond J., Secretary, Department of Labor, prepared statement 41

Jensen, D. Lowell, Assistant Attorney General, Criminal Division, Department of Justice, accompanied by David Margolis, Chief of Organized Crime and Racketeering Section, Criminal Division 64

Nunn, Hon. Sam, A U.S. Senator from the State of Georgia 6

  Prepared statement 16

Rudman, Hon. Warren, a U.S. Senator from the State of New Hampshire 4

Ryan, T. Timothy, Solicitor, Department of Labor 40

ADDITIONAL INFORMATION

Articles, publications, et cetera:

  Jurisdiction of Departments of Labor and Justice in Labor Area, memorandum from Eleanore Hill, chief counsel, to Senator Nunn, February 2, 1982 12

  Status Report on Labor Department—Criminal Division Investigative Relationships, memorandum from Benjamin R. Civiletti, Assistant Attorney General, Criminal Division, and John C. Keeney, Deputy Assistant Attorney General, Criminal Division, January 31, 1978 30

Communications to:

  Nickles, Hon. Donald, chairman, Subcommittee on Labor, from Robert A. McConnell, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice, February 9, 1982 66

  Nunn, Hon. Sam, a U.S. Senator from the State of Georgia, from George W. Lehr, executive director, Central States Southeast and Southwest Areas Health and Welfare and Pension Funds, December 17, 1981 24

LABOR MANAGEMENT RACKETEERING ACT OF 1981

WEDNESDAY, FEBRUARY 3, 1982

U.S. SENATE,
SUBCOMMITTEE ON LABOR,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 4232, Dirksen Senate Office Building, Senator Don Nickles (chairman of the subcommittee) presiding.

Present: Senators Hatch and Nickles.

Also present: Senators Rudman and Nunn.

OPENING STATEMENT OF SENATOR NICKLES

Senator NICKLES. The subcommittee will be in order.

Good morning. Today's hearing is on Senate bill 1785, the Labor Management Racketeering Act, the culmination of many years of oversight hearings in this area by the Permanent Subcommittee on Investigations. I was privileged along with Senator Hatch to join Senator Roth, Senator Rudman, and Senator Nunn at several of their hearings held last year. I am pleased that Senators Rudman and Nunn are joining us this morning.

The need for this legislation has been clearly established. At the waterfront corruption hearings, I was appalled to learn that buying labor's favors is a common practice on our Nation's waterfronts. It is recognized that much of the problem is a result of the enactment of laws which seem to encourage crime. It is time we changed the course of this country's labor laws. It is time the laws reflect the high standards Americans expect of us.

Other serious problems were uncovered during the hearings conducted on the Teamsters Central States Pension Fund and the activities surrounding that fund. The problems have been well publicized and cast a shadow on both the Labor Department and certain aspects of the labor movement.

There are other examples, but we are not here today to look behind us. Rather, we must look ahead. We need to explore what corrective actions have been taken and what needs to be done to insure that these same mistakes will not be repeated.

The bill we will discuss today is certainly a step in that right direction.

Senate bill 1785 adds to and clarifies the list of crimes which disqualify certain persons from holding positions of trust either with an employee benefit plan or in a labor organization. Further, the bill increases the period of time for which such a person is not allowed to serve in these positions from 5 years to 10 years and begins running on the date of the trial court conviction rather than the date of the last appeal. This precludes someone found guilty of a felony from continuing to manage pension plan funds or a labor organization until he has exhausted all of his appeals, a process which can extend for years. To soften this, all moneys due such persons are paid into escrow and, if later found not guilty, such funds will be reimbursed.

Under current law, there is a loophole which permits officers, directors, and other members of the governing board of labor organizations who have committed certain crimes to remain employees of that labor organization in clerical or custodial positions. This allows a convicted felon to retain his same pay and power by being classified as a clerk for payroll purposes. These are the kinds of laws which have outraged the people of this country.

The perceived duty of the Labor Department to actively pursue potential criminal activities in the labor or pension field has differed over the years. I am pleased that Secretary Donovan has already testified that under his direction the Department will actively investigate criminal activities in the labor area. On October 28, 1981, Secretary Donovan stated, and I quote: "If we find evidence of criminal wrongdoing, the matter will be pursued vigorously."

I look forward to further comments from the Labor Department today.

At these same hearings, AFL-CIO President Lane Kirkland told us, and I quote: "Union office is a calling, not a business. Those who enter that calling are, and should be, held to a higher standard."

We greatly appreciate Mr. Kirkland's endorsement of our bill with two narrow qualifications. I agree with Mr. Kirkland that a person holding union office who takes an employer payoff, misuses the right to strike, or pilfers from a union treasury, casts a dark shadow on the efforts of men and women who are union members today.

This subcommittee is willing to continue to work with all parties interested in and affected by this legislation. We must set aside political differences, keeping in mind the Americans who will be affected by our decisions today.

I think it is critical, if we are going to be able to successfully clean up many of the abuses that have been brought out over the testimony before the Permanent Subcommittee on Investigations, that this legislation or legislation with some possible minor modifications be enacted.

I am very pleased that Senator Hatch as chairman of the Committee on Labor and Human Resources has shown his interest by his involvement in the hearing and also involvement with his staff in this legislation and other measures that we will be working on in the near future.

It is our intention to hold a subcommittee markup, hopefully, on this bill if we can get all parties resolved by next Tuesday, February 9, in addition to markup of the Longshore Act before the full Labor Committee by next Tuesday.

Senator Hatch, we thank you again for your cooperation and assistance on behalf of the full Labor Committee. I appreciate your input and cosponsorship also of Senate bill 1785.

OPENING STATEMENT OF SENATOR HATCH

Senator HATCH. Thank you so much, Senator Nickles. We appreciate the leadership that you have shown as well as our colleagues who are going to testify here this morning.

This hearing today is probably one of the most critical and important hearings which this committee will hold in this Congress. Without question, labor management corruption is one of the most sinister threats to the health and well-being of the trade union movement and of our industrial democracy and to the men and women who work within that movement. That is, after all, the bottom line as far as I am concerned. But it is not only a threat to the welfare and security of our Nation's working men and women. By siphoning off billions of dollars for bribes, payoffs, and kickbacks, organized crime is sapping our economy of the strength and the resources vitally needed to increase productivity and create more employment.

It is for this reason that I am both pleased and proud of our distinguished subcommittee chairman, Senator Nickles, for scheduling this hearing on the Labor Management Racketeering Act of 1981, a bill which both he and I have the privilege of cosponsoring. At the same time, I want to give special recognition and commendation to both Senators Nunn and Rudman. It has been through their vigorous and tireless leadership of the Permanent Subcommittee on Investigations that we have a comprehensive record on union corruption as it exists today.

Over the last several years, they have conducted exhaustive oversight hearings. Special attention has been given to crime on the waterfronts. What has been so disturbing about their hearings is that they vividly demonstrate the reality and the pervasiveness of labor management racketeering. It remains perhaps as serious today as it was 30 years ago when Senator Kefauver, followed by Senator McClellan, led the historical investigations into union corruption.

Equally disturbing is the apparent fact that the efforts by the Federal Government, especially the Department of Labor, to combat and root out such corruption has at times been disappointing. Indeed, the Permanent Senate Investigations Subcommittee investigations into the Department's handling of the Central States Teamster Pension case paint a picture of incompetence if not willful and reckless indifference. However, it is very gratifying that the labors of the Permanent Subcommittee on Investigations have borne fruit. The bill which we consider today is the result of PSI's work. It is especially pleasing to note that the AFL-CIO under the strong leadership of its distinguished president, Lane Kirkland, has endorsed this legislation.

I also care to mention that Doug Fraser of the United Auto Workers has expressed interest and support for this legislation. I think it bodes well for the labor movement when two of the top leaders can speak out and admit and can cooperate—admit that there is corruption and speak out and try and cooperate in trying to stop any corruption that exists.

It always gives me a sense of satisfaction when the leadership of organized labor and I can agree on something. I think that this bodes well for prompt passage of this legislation.

I am looking forward today to hearing from our colleagues. Likewise, I am looking forward to hearing from the Department of Justice and the Department of Labor for their comments, not only for their comments on the legislation itself but also for their commitment to enforce vigorously, both this measure and the criminal and civil laws already in force.

Again, I want to thank Senators Nunn and Rudman for the leadership that they have given on this issue. I am proud to be associated with both of them. I believe that, when this classic landmark piece of legislation finally passes Congress, that the men and women, the workers of America will be much better off.

Senator NICKLES. Thank you, Senator Hatch. We appreciate your input.

I think, Senators Rudman and Nunn, if it would be all right, both of you can make your statements first, then we can address our questions to both of you. Senator Rudman, would you begin?

STATEMENT OF HON. WARREN RUDMAN, A U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Senator RUDMAN. Thank you very much, Mr. Chairman and Senator Hatch.

I appreciate the opportunity to testify before your Labor Subcommittee today as you open hearings on S. 1785, the Labor Management Racketeering Act of 1981.

I want to say at the outset that I am privileged to sit here at the table with Senator Nunn, who has led the bipartisan effort of the Permanent Subcommittee on Investigations, chaired by Senator Roth, in a series of investigative hearings starting the year before last and continuing through last year that I think were extraordinary based upon the amount of evidence adduced and the legislation that the hearings will, hopefully, produce.

I first became involved with the issue last year when Senator Roth convened hearings before PSI to continue Senator Nunn's investigations into waterfront corruption. As a new Senator, I only became involved during the final stages of the investigations. However, as attorney general of the State of New Hampshire for 6 years, I had firsthand experience with investigations and the activities of organized crime. As a former law enforcement official, I am pleased to be associated with this effort to eliminate the influence of organized crime in union affairs. I am particularly pleased to see that both the Teamsters control States' pension fund and the AFL-CIO have stepped forward to endorse this legislation, which will benefit the rank and file as well as all other levels of this economy.

Senate bill 1785 attempts to respond to the limitations in present law which have resulted in the frustration of the intent of previously enacted statutes. It is a product of the hearings last year on waterfront corruption which identified the insidious influence organized crime continues to hold over American business. Most of the testimony dealt with the Department of Justice's Miami Organized Crime Strike Force investigation that began during October of 1975. The investigation, known as UNIRAC, culminated in 22 indictments and 9 convictions. Witnesses who were involved with UNIRAC testified that the large network of U.S. ports are controlled by organized crime. Payoffs occur with such regularity that they have become a part of normal business operating costs. Larceny, sabotage, and labor disruption are so prevalent that they are included as a part of the cost of doing business and, of course, are passed on to the consumer. Without question, when these conditions prevail, free enterprise does not exist. Competition is stifled, making it impossible for legitimate business to operate. The result is a cancer on the economy; a parasite which feeds off consumers, legitimate businesses, and union members alike.

It would be unfair to those involved in the UNIRAC investigation for me to say that no substantial gains were made. Unfortunately, however, according to witnesses at our hearings, the corruption continues; it is business as usual on the docks. An unanticipated consequence of the legislation as presently written has occurred. During the pendency of their appeals, convicted union officials continue to operate in their former positions. The president of a Miami local who was tried, convicted, and sentenced as a result of the UNIRAC efforts was reelected president of his union. Other convicted union officials who exercised their fifth amendment rights during our hearings continue to hold and abuse their union positions. Racketeering and corruption continue, resulting in a nullification of much of the effort of the UNIRAC investigation.

The answer to the problem is simple and forthright. Under the provisions of S. 1785, union officials would no longer be able to continue in office once they had been convicted of crimes enumerated in this statute. Any such disbarment would last for 10 years in order to fully cleanse the union's ranks of the corruption of past officials.

This is the meat of S. 1785. There are other provisions of great importance, but this one provision would insure that the efforts of law enforcement officials will not be in vain, that the corrupt influence of convicted union officials would in fact be terminated.

Finally, Mr. Chairman, I want to make one further important point with respect to the provision of S. 1785 which clarifies the responsibility of the Secretary of Labor to investigate civil and criminal violations of the Federal pension law and related statutes. As you know, over the past 5 years the Permanent Subcommittee on Investigations has involved itself continuously in the oversight of the Department of Labor with respect to its commitment to criminal enforcement actions. During the last administration, this oversight developed into confrontation between the subcommittee and the Department of Labor as a result of our view that not enough was being done to insure that criminal as well as civil sanctions were being sought.

Indeed, our subcommittee held hearings 3 years ago when the Secretary of Labor sought to withdraw Department of Labor support from the organized crime strike force program. Under this administration, our subcommittee has listened to a new Secretary of Labor who professes a strong commitment to criminal investigative actions. Yet, I am frank to tell you that I am troubled over what has occurred in the aftermath of the October 1981, hearings in which we were told of this new resolve at the Department of Labor. At least twice within the past 2 months, senior Department of Labor officials have met with senior Department of Justice officials to discuss the possible transfer or abolition of the approximately 90 positions held by the Inspector General at the Department of Labor solely for the investigation of organized crime and its corruption of union benefit plans. This raises the very issue considered 3 years ago.

It distresses me greatly to think that once again we may—and I emphasize may—we may have a Department of Labor which seeks to avoid the immense responsibility of insuring the integrity of the benefit plans which protect the working people of the United States. It concerns me further that the Department of Labor can even undertake preliminary discussions with the Department of Justice relating to the transfer or abolition of these 90 positions without the common courtesy of discussing the matter with the majority and minority members of the Permanent Subcommittee on Investigations, given the prior attention and history in this issue.

When our hearings were concluded last October, a commitment was made to hold followup hearings to insure that the apparent commitment of the Secretary of Labor and the Department of Labor to institute aggressive investigative policies was, in fact, reflected by the Department's actions. Now, more than before, the need to analyze that commitment is apparent. To that end, I hope that our subcommittee can continue to work with members and staff of this subcommittee to insure not only a commitment from the Department of Labor in this regard but also, Mr. Chairman, tangible action.

Senator NICKLES. I appreciate your comments. I can assure you that this subcommittee, and also the full Labor Committee has been very appreciative of the efforts of the Permanent Subcommittee on Investigations for your input. We will continue to aggressively work together to insure adequate enforcement by both Justice and Labor. We will certainly work together on that. Senator Nunn?

STATEMENT OF HON. SAM NUNN, A U.S. SENATOR FROM THE STATE OF GEORGIA

Senator NUNN. Thank you very much, Mr. Chairman, and Senator Hatch. I am delighted to appear here today with Senator Rudman at the opening of the Labor Subcommittee's hearings on S. 1785, the Labor Management Racketeering Act of 1981. As you know, I introduced that bill in the Senate on October 28, 1981, together with several cosponsors. I am very pleased, Mr Chairman, that you are a cosponsor of that bill. To date, we have a total of 12 cosponsors. I hope we will have others. All of us feel that this is a necessary and very important piece of legislation. I want to thank you, Mr. Chairman, as well as Senator Hatch as chairman of the full committee for your cooperation, for your prompt hearings on this very important subject, and for the splendid cooperation that your staff has given to our staff.

I also want to thank Senator Rudman and Senator Roth for the splendid and complete cooperation we have had between the majority and the minority of Permanent Subcommittee on Investigations in working on this legislation and on the hearings. Having Senator Rudman on the subcommittee is indeed a great asset because he comes with a tremendous amount of experience in this area. Even though he has not been in the Senate very long, you would never know it because he has done a terrific job in this area.

S. 1785 attempts to remedy serious problems concerning the infiltration of unions and employee benefit plans by corrupt officials who have no real concern for the well-being of the honest rank-and-file union members they pretend to represent. This bill is a direct outgrowth of public hearings on waterfront corruption held before the Permanent Subcommittee on Investigations in February of 1981. I know, Mr. Chairman, that you recall these hearings because you and Senate Hatch joined us in the hearings and made a real contribution at that time. You certainly effectively participated in our efforts to expose the corruption on our Nation's waterfront. We appreciated your knowledgeable concern and support then, and we continue to appreciate that.

I am going to skip over a good bit of my prepared testimony. There are a lot of details here that are very important, but I know you have other witnesses. So, if you would indulge me, I will move over and ask that my entire statement be put in the record.

Senator NICKLES. It will be put in the record.

Senator NUNN. Mr. Chairman, the 2 weeks of hearings we conducted in 1981 as a result of our extensive investigation presented a very dismal picture. We heard that the corruption bred by organized crime is still business as usual in many port cities. We heard that certain ILA officials have direct links to organized crime figures in the traditional mob families, and that payoff money was shared with known organized criminals.

It was the position of such people in union office which gave them the power to perform these feats of corruption. And despite their convictions almost all of them, as Senator Rudman has indicated, were still in union office when we held our hearings long after the convictions.

The influence of these people is shocking, even in ports such as Savannah, Ga., in my home State. One of our key witnesses, a Miami shipping executive, told us under oath that he was able to expand his business to Savannah only by paying off ILA officials in Miami. Those officials arranged a lucrative stevedoring contract and promised him top-quality labor in Savannah in return for the payoff money. This situation brings home to all Americans the enormous control that organized crime, operating out of New York and Miami under the guise of union officers, has over the entire Atlantic seaboard.

Again, Mr. Chairman, we found that most of the corrupt officials who derived this power from union office were still, long after their convictions, holding their union offices and perverting union strength, and I might add very strongly, taking advantage of the rank and file, honorable and honest working people in those unions.

Our hearings showed how workmen's compensation had been used to extort money from shipping company executives. I know you are especially concerned with this aspect of waterfront corruption, Mr. Chairman, and I am proud to have cosponsored with you S. 1182, the Water Workers Compensation Act, which you introduced last year. I also hope that that makes progress as we move down the legislative agenda.

Witness after witness described the struggle for economic survival in ports riddled with a pervasive pattern of kickbacks and illegal payoffs to union officials. My colleagues and I heard of payoffs to insure the award of work contracts, payoffs to maintain contracts already awarded, payoffs to insure labor peace, payoffs to allow management circumvention of labor strikes, payoffs to prevent the filing of fraudulent workmen's compensation claims, payoffs to expand business activity into new ports, and payoffs to accord certain companies the freedom to circumvent ILA contract requirements with impunity.

Again, we found that the corrupt officials derived the leverage to extort these payoffs from their key positions as union officers. Again, we found that most of those officers were still in office long after they had been convicted in court.

Moreover, we were told that a payoff is commonly treated as a mere cost of doing business which can be, and is, routinely passed on as an added cost to the consumer. Our traditional and cherished notions of free enterprise have become nearly nonexistent in the ports of this country.

These payoffs, though illegal under current law, are punishable only as a misdemeanor.

In our hearings we discovered problems which cry out for legislative solutions. The Justice Department's investigation, we found, was a perfect example of just how much effect law enforcement can have on labor union corruption. The FBI and the Government's prosecutors have done all they can to weed out that corruption, yet the convicted union officials in most cases continued to hold office long after their convictions. Nothing more undermines the law than that, seeing a massive FBI effort over a period of years pay off in union convictions and corruption convictions and then have that completely undermined because the judicial system and our laws simply did not accomplish the purpose. Nothing can be more discouraging to law enforcement. Nothing can be more discouraging to the rank and file who believe that they are entitled to some protection against this kind of abuse.

We cannot, as Members of the Senate, Members of Congress, and as American citizens expect the FBI and the Justice Department to devote huge resources to the waterfront on a perpetual basis. They have done their job, and they have done it well. Unless, however, we have a corresponding effort by the Congress, this cancer will continue to grow.

The bill before this subcommittee, S. 1785, was designed to effectively address the most glaring problems exposed by our 1981 hearings as well as by the inquiries and investigations of the last 30 years.

As I noted, payoffs by company officers to union officials are, under current law, punishable only as a misdemeanor. S. 1785 makes any such violation involving an amount of money greater than $1,000 a felony punishable by up to 5 years imprisonment or a fine of up to $15,000 or both.

Another problem I mentioned was the fact that convicted union officials remain in union office until all appeals from their convictions have been exhausted, usually long after the original conviction. This bill attempts to rid labor organizations and employee benefit plans of the influence of these corrupt elements by providing that they shall be barred from union or benefit plan office immediately after their conviction, that is, as of the day of the guilty verdict, not as of the much later final appeal. In order to be as fair as possible, the bill provides that the salary which a convicted official would receive shall be placed in escrow during his appeals and will be available for him or for her if the conviction is finally reversed.

Current law provides that a union officer or an officer of an employee benefit plan shall be prohibited from holding certain union offices for a period of 5 years. Our investigation and hearings compel us to the conclusion that this is not long enough. Many corrupt officials have enough power to enable them to continue to exert adequate influence over unions and employee benefit plans so as to resume office after a 5-year lapse and continue on with the corruption. We concluded that a 10-year ban would provide enough time for a union to rid itself of the convicted official's influence.

Current law enumerates those crimes for which conviction will result in removal from office and disbarment. S. 1785 leaves the list of crimes as they are presently written but adds to the end of the list a catchall phrase requiring removal if the individual is convicted of any Federal or State felony involving abuse or misuse of his official position.

S. 1785 also specifies those employee benefit plan officials who are subject to removal and disbarment for conviction of an enumerated offense. Current law merely refers to any person who has been convicted. S. 1785 specifies the particular officials subject to this provision. As written, the provision would apply equally to union as well as management representatives holding positions of trust as to employee benefit plans.

Mr. Chairman, I think it is fair to point out that this is a two-way street. This kind of corruption could not take place successfully if management was not also involved. I might add here that, since our hearings, the National Association of Stevedores has adopted a code of ethics within their own ranks. I am doing all I can to try to encourage the Federal Trade Commission to approve that code of ethics without saying that it is a violation of antitrust laws. But that is the kind of tangle we run into today: The stevedores adopting a code of ethics and having to get it approved by the FTC as a possible violation of antitrust laws. I would hope that the FTC would act on that in the near future.

S. 1785 also enumerates the particular offices and positions which an individual is prohibited from holding if he has ever been convicted of an enumerated crime. These offices and positions were listed after very careful consideration and were drafted so as not to inhibit the payment of union pensions or to prohibit union membership.

Finally, the bill clearly delineates the responsibility and authority of the Department of Labor to actively and effectively investigate and refer for prosecution criminal activities relating to union or employee benefit plan corruption. This provision is directly responsive to the many witnesses who during our hearings testified that the Department of Labor had consistently over a long period of time failed to act against labor racketeering on the waterfront and elsewhere.

We heard from both Federal prosecutors and the FBI that the Department of Labor had taken no role in the fight against criminal corruption on the New York/New Jersey waterfront. A Federal prosecutor told us that the Department of Labor had simply not addressed the problem of waterfront corruption in south Florida. The chief investigator of the State attorney's office in Dade County, Fla., told us that no Federal agency, including the Department of Labor, currently monitors criminal corruption on the Miami waterfront. A witness convicted in the UNIRAC investigation and familiar with the scope of labor racketeering suggested that the Labor Department, given its failure to act in the area, should be completely abolished.

Secretary Donovan, in our November hearings, promised a more active role by the Department in the criminal area. Nevertheless, I have only recently learned, as Senator Rudman referred to a few minutes ago, that the Department of Labor is now seriously considering transferring many, if not all, of its criminal investigators to some other Federal enforcement agency. Clearly, such action suggests that the directive set forth in S. 1785 is necessary to insure an active and effective role by the Department of Labor in the criminal area.

I now understand that there may be some opposition to this last section of the bill as a possible encroachment on the authority of other Federal investigative and prosecutorial agencies to pursue criminal allegations. Mr. Chairman and Senator Hatch, that argument ignores the specific provision of S. 1785 which we intentionally included to avoid such a result. The bill expressly states, and I quote:

> Nothing in this subsection shall be construed to preclude other appropriate Federal agencies from detecting and investigating civil and criminal violations of this subchapter and other related Federal laws.

So, when the Department representatives testify, I would ask, Mr. Chairman, that they be questioned as to how in any way this kind of provision, which is abundantly clear, would dilute the jurisdiction of the Justice Department. I simply do not understand it. Frankly, I am quite disappointed that neither your subcommittee nor our subcommittee were informed of the Department of Labor and the Department of Justice's position until shortly before these hearings. This matter has been pending for months and months and months and months and months.

Senator HATCH. Would you yield, Senator Nunn? I feel exactly the same way you do about that. I think it is pathetic. There is nothing that interferes or encroaches upon the Justice

Department's right and its real obligation, as a matter of fact, to get in and do whatever it can about business union corruption. But I think it would be a travesty if the Department of Labor, which has direct jurisdiction, is not doing everything it can, even independently of the Justice Department, to try and resolve these conflicts.

So, I am with you. I personally believe that you have done this country a great service in raising this issue. We will ask those questions of the representatives of both agencies.

Senator NUNN. Thank you very much, Mr. Chairman. Just as a matter of interest, while we are at a brief breaking point, I have asked the staff to come up with a sheet which I will furnish. That sheet shows the unique provisions of the law that give the Labor Department jurisdiction over the provisions, for instance, of the Labor Management Reporting and Disclosure Act. That is 29 U.S.C. 504; 29 U.S.C. 1111 is the debarment provisions of the Employee Retirement Income Security Act, known as ERISA; and the Labor Management Services Administration, known as LMSA, is also under the jurisdiction of the Department of Labor.

[The information referred to follows:]

MEMORANDUM

February 2, 1982

TO: Senator Nunn

FROM: Eleanore Hill
Chief Counsel

RE: Jurisdiction of Departments of Labor and Justice in labor area

There are several areas of responsibility in the labor field which could theoretically be transferred to the Justice Department in addition to responsibilities for criminal investigations. Should the Justice Department insist upon all criminal responsibility in these areas, they could possibly be charged with various areas of reporting, disclosure and filing requirements as well. As you requested, those areas can be generally grouped as follows:

1. Enforcement of 29 U.S.C. 504 (debarment provisions of the Labor Management Reporting and Disclosure Act) as well as the numerous reporting and trusteeship provisions for labor organizations under that statute (29 U.S.C. 431-482);

2. Enforcement of 29 U.S.C. 1111 (debarment provisions of the Employment Retirement Income Security Act (ERISA)) (criminal violations delegated to FBI by Justice/Labor memo of understanding) as well as the numerous reporting and disclosure provisions for employee welfare benefit plans now delegated to the supervision of the Labor Department under ERISA - Titles 1 and 3 of ERISA are generally under Labor's jurisdiction (with supervision of civil enforcement litigation delegated to Justice), while Title 2 of the Act falls within Treasury's jurisdiction;

3. Lastly, the Labor Management Services Administration (LMSA) of the Department of Labor is responsible for the administration of innumerable other statutory labor requirements aside from those in LMRDA and ERISA (the statutes which S. 1785 amends). Attached for your information is a list provided by the Labor Subcommittee detailing all areas of statutory responsibility for LMSA.

EH/kd

AUTHORIZING LEGISLATION

Legislation	Budget Request 1981	Budget Request 1982
Authorizing legislation containing indefinite authority		
Urban Mass Transportation Act of 1964, as amended (P.L. 88-365)	$281,000	$303,000
Rail Passenger Service Act of 1970, as amended (P.L. 91-518)	16,000	17,000
Federal Highway Aid Act of 1974, (P.L. 93-87)	13,000	14,000
Surface Transportation Assistance Act of 1978, (P.L. 95-599)	226,000	244,000
An act to create a Department of Labor, (P.L. 62-426)	1,901,000	2,050,000
Labor-Management Reporting and Disclosure Act of 1959, as amended, (P.L. 86-257)	19,758,000	20,591,000
Civil Service Reform Act of 1978, (P.L. 95-454)	817,000	851,000
Vietnam Era Veterans' Readjustment Assistance Act of 1974 (P.L.) 93-508	3,246,000	3,419,000
Employee Retirement Income Security Act of 1974 (P.L. 93-406)	31,755,000	33,459,000
National Mass Transportation Assistance Act of 1974 (P.L. 93-503)	-0-	-0-
High-Speed Ground Transportation Act of 1965, as amended, (P.L. 89-220)	-0-	-0-
Redwood National Park Act of 1978, as amended (P.L. 95-250)	265,000	285,000
Airline Deregulation Act of 1978, (P.L. 95-504)	77,000	82,000
Social Security Disability amendments of 1980, (P.L. 96-265)	-0-	-0-
Health Planning and Resources Development Amendments of 1979, (P.L. 96-79)	-0-	-0-

Senator Nunn. We have had witness after witness after witness tell us that these provisions of the Code give the Labor Department the unique ability to have the records and the books and to be in a constant monitoring position as to violations of the pension law, and violations of other relevant labor provisions. Now, if the Justice Department is coming here this morning and testifying that they oppose the Labor Department having criminal jurisdiction, then they are opposing what we understand is the existing law. We are trying to make it abundantly clear in this provision.

Senator Hatch. If you would yield again, I agree with you on that, too. We have had a year of difficulties up until recently, when we have been getting, I think, quite a great degree of cooperation from the Department of Labor. We have had a year of difficulties in getting into some of these materials that I think have put us a year behind. I will be honest with you. I am sick and tired of it. If we have to write the law more explicitly, I am for doing that.

I agree with you. I think you have done a great service in pointing that out here today. It is something that has really bothered us on this committee for this past year and, frankly, long before that; but there was not too much interest in getting into these things before that other than on your subcommittee.

Senator Nunn. Thank you very much, Senator Hatch.

I just want to inform both the Justice Department and the Labor Department that, if they are really serious about their position in opposing labor criminal investigations in this area, then what I would suggest is that we take a close look at transferring all of these responsibilities from the Labor Department in the pension area to the Justice Department. The Justice Department simply cannot do their job in this area without having more jurisdiction than they do now. So, if they want to have the exclusive jurisdiction over the criminal side and keep Labor from getting involved at all, I say let us take a close look at turning all of this statutory responsibility over to them and taking that hunk of the Labor Department, which is a huge portion of it, and putting it over in the Justice Department once and for all. That may result in the abolition of the Department of Labor; but, if that is the case, so be it.

Senator Nickles. I think the very idea of Justice receiving ERISA would scare them enough that they may change their position.

Senator Nunn. I would like Attorney General Smith to read through ERISA and then tell us if he really wants that.

Senator Nickles. I would agree with your statement wholeheartedly. We look forward to receiving their testimony.

I am not wanting to interrupt. Did you have some other statements?

Senator Nunn. Just briefly, I will skip over even my abbreviated section.

I do want to close on this point, stating what we have heard from the Department of Justice in the past on this kind of capability. A Federal prosecutor testified, and this is, of course, a Justice Department official, and I am quoting him. When asked whether the Department of Justice is capable of continually policing the waterfront on the level of UNIRAC, the prosecutor testified, and I quote:

> It is impossible, Senator. What has happened is, for instance, the agents and attorneys who were first involved in this investigation and prosecution have gone on into other areas and we have other priorities. It takes an enormous amount of resources to be committed to this matter in order to monitor and police the industry.

The same prosecutor testified that the Department of Labor could play an effective role in the effort against labor racketeering, noting that, and again I quote: "They have the authority"—and this is the key:

> They have the authority to monitor this better than the FBI can in terms of constant monitoring. The FBI, I think, has to devote its resources to too many other areas and the notoriety of the corruption in the waterfront and in the ILA should catch the Department of Labor's attention to monitor what is going on in that industry.

Mr. Chairman, we have had all sorts of testimony in this area, from Attorney General John Keeney to the Attorney General, Ben Civiletti. I will not go into details on it, but I will refer that to you and your staff for the record.

I just want to close by saying that I am pleased that Lane Kirkland, president of the AFL-CIO, has endorsed S. 1785. I think that is a very, very significant step. I certainly want to thank Lane Kirkland for coming forward and making that kind of endorsement, which I know required a great deal of discussion in his own group. I think it was an act both of integrity and courage.

Also, S. 1785 was endorsed by George Lehr, the executive director of the Teamsters Central States Pension Fund. After he made the endorsement himself, I asked him if he would get his board of trustees to consider the subject. I have a letter from him dated December 17, 1981, saying that the Central States Southeast and Southwest Area Pension Fund endorses S. 1785. I would like to make that a part of the record.

Senator NICKLES. Without objection, the material you referred to will be inserted into the record along with your entire prepared statement.

[The prepared statement of Senator Nunn and letter referred to follows:].

STATEMENT OF SENATOR SAM NUNN

Before The

Subcommittee on Labor
Of The
Committee on Labor & Human Resources

February 3, 1982

Mr. Chairman, I am delighted to appear here today at the opening of the Labor Subcommittee's hearings on S. 1785, the "Labor Management Racketeering Act of 1981." As you know, I introduced that bill in the Senate on October 28, 1981. I was very pleased to have you join me as a cosponsor on that bill. To date, we have a total of twelve cosponsors. All of us feel that this is a necessary and important piece of legislation, and I want to thank you, Mr. Chairman, as well as the full Subcommittee and staff, for the prompt scheduling of these hearings.

S. 1785 attempts to remedy serious problems concerning the infiltration of unions and employee benefit plans by corrupt officials who have no real concern for the well-being of the honest rank-and-file union members they pretend to represent. The bill is a direct outgrowth of public hearings on waterfront corruption held before the Permanent Subcommittee on Investigations in February, 1981. I know that you recall those hearings, Mr. Chairman, because you and Senator Hatch joined us at that time and actively and effectively participated in our efforts to expose the corruption on our nation's waterfront. We appreciated your knowledgeable concern and support then as we do now.

Our February, 1981, hearings were the latest in a series of Congressional hearings which goes back 20 years to the time when the late Senator John L. McClellan chaired the Permanent Subcommittee on Investigations. Many of us remember vividly the McClellan committee's investigation which exposed a wide pattern of racketeering and organized crime infiltration of several labor unions, most notably the Teamsters. Those hearings lent considerable support for laws which were designed to assist in stamping out labor union corruption.

Actually, the McClellan hearings followed the work of the Kefauver crime committee of the early 1950's and its successor, the Subcommittee on Waterfront Racketeering and Port Secuirty of the Senate Commerce Committee.

The Kefauver committee touched on waterfront union corruption and the Waterfront Subcommittee followed with an extensive investigation in 1953. In its interim report on the New York-New Jersey waterfront, the Subcommittee said of "the Nation's tough and trouble-ridden waterfront":

> For many years these areas have remained lawless frontiers, with segments that have consistently defied (organized crime) infiltration. Yet they are also bottlenecks for foreign and intercostal commerce. Here the mob is still entrenched, gorging itself on the flow of shipping, and resisting all attempts to break up what has been characterized as "the last business racket."

> The Subcommittee found that:
>
> Criminals whose long records belie any suggestion that they can be reformed have been monopolizing controlling positions in the International Longshoremen's Association and in local unions. Under their regimes, gambling, the narcotics traffic, loansharking, shortganging, payroll "phantoms," the "shakedown" in all its forms -- and the ultimate brutality of murder -- have flourished, often virtually unchecked.

In 1975, more than 20 years later, the Justice Deprtment launched a nationwide investigation of racketeering on our waterfronts. This sweeping inquiry culminated in the criminal convictions of more than 100 high level ILA officials and shipping company executives.

These persons were charged with a variety of offenses ranging from violating the Taft-Hartley Act to extortion, payoffs, kickbacks, threats, intimidation, obstruction of justice and income tax evasion.

The activities and associations of several of the convicted ILA officials apparently placed them within the recognized organized crime network. Some of their ILA activities dated back to the time of the Watefront Subcommittee, years ago.

The fact that a number of shipping company officials were convicted indicated that organized crime's influence still reaches right through the ILA to significant portions of the shipping industry.

Despite the convictions, reports reaching the Permanent Subcommittee on Investigations indicated that corrupt ILA officials still controlled certain ILA locals and still exerted tremendous influence over the union's international structure.

All of these factors were disturbing to me, and to other members of the Subcommitee, for they pointed to a continuation of the underworld's control of our waterfronts that was revealed nearly 30 years ago. If so, had the work of three Senate committees and the tremendous efforts of the Justice Department and the FBI gone for naught?

In order to answer this disturbing question, I ordered a preliminary inquiry in 1980. I instructed the staff to go beyond the evidence introduced in the criminal trials. Much information regarding organized crime membership and associations often cannot be introduced in criminal trials because of the Federal Rules of Evidence, and I wanted the Subcommittee and the Senate as legislative and policy-making forums to have the benefit of more evidence than the Justice Department was able to introduce during the various prosecutions.

Mr. Chairman, the two weeks of hearings we conducted in 1981 as a result of our extensive investigation presented a dismal picture.

We heard that the corruption bred by organized crime is still "business as usual" in some port cities. We heard that certain ILA officials have direct links to organized crime figures in the traditional mob "families," and that payoff money was shared with known organized criminals.

We found that the pattern of organized crime control could be viewed as analagous to business. For years organized criminals controlled the waterfronts of New York and New Jersey, making tremendous profits. In the 1960's they saw new markets opening with the development of ports in the Southeast and along the Gulf Coast. They decided to get the jump on their potential competitors in these lucrative areas, so they sent a couple of their executives to Miami and opened what we might analagously call a wholly owned subsidiary.

This new subsidiary would control the corruption rights to all ports below Norfolk, Virginia, while they retained control over the Northeast. The profits of the subsidiary would be shared with the parent organization back in New York and New Jersey.

It was the position of such people in union office which gave them the power to perform these feats of corruption. And despite their convictions, almost all of them were still in union office when we held our hearings long after their convictions.

The influence of these people is shocking, even in ports such as Savannah in my home state. One of our key witnesses, a Miami shipping executive, told us under oath that he was able to expand his business to Savannah only by paying off ILA officials in Miami. Those officials arranged a lucrative stevedoring contract and promised him "top quality" labor in Savannah in return for the payoff money. This situation brings home to all Americans the enormous control that organized crime, operating out of New York and Miami under the guise of union officers, has over the entire Atlantic seaboard.

Again, Mr. Chairman, we found that most of the corrupt officials who derived this power from union office were still, long after their convictions, holding their union offices and perverting union strength.

Our hearings showed how workmen's compensation has been used to extort money from shipping company executives. I know you are especially concerned with this aspect of waterfront corruption, Mr. Chairman, and I am proud to have cosponsored S. 1182, the U. S. Navigable Water Workers Compensation Act, which you introduced in the Senate last year.

Witness after witness described the struggle for economic survival in ports riddled with a pervasive pattern of kickbacks and illegal payoffs to union officials. My colleagues and I heard of payoffs to insure the award of work contracts, payoffs to maintain contracts already awarded, payoffs to insure labor peace, payoffs to allow management circumvention of labor strikes, payoffs to prevent the filing of fraudulent workmen's compensation claims, payoffs to expand business activity into new ports, and payoffs to accord certain companies the freedom to circumvent ILA contract requirements with impunity. Especially disturbing is the fact that the evidence clearly suggests that, through that system of payoffs, recognized leaders of the traditional organized crime families influence and effectively dominate the International Longshoremen's Association and large segments of the American shipping industry.

Again, we found that the corrupt officials derived the leverage to extort these payoffs from their positions as union officers. Again, we found that most of those officers were still in office long after their convictions.

Moreover, we were told that a payoff is commonly treated as a mere cost of doing business which can be, and is, routinely passed on as an added cost to the consumer. Our traditional and cherished notions of free enterprise have become nearly non-existent in the ports of this country.

These payoffs, though illegal under current law, are punishable only as a misdemeanor.

In our hearings we discovered problems which cry out for legislative solution. The Justice Department's investigation, we found, was a perfect example of just how much effect law enforcement can have on labor union corruption. The FBI and the Government's prosecutors have done all they can to weed out corruption, yet the convicted union officials in most cases continued to hold office long after their convictions.

We cannot, as Members of the Senate, Members of Congress and as American citizens expect the FBI and the Justice Department to devote huge resources to the waterfront on a perpetual basis. They have done their job and done it well. Unless, however, we have a corresponding effort by Congress, this cancer will continue to grow.

The bill before this Subcommittee, S. 1785, was designed to effectively address the most glaring problems exposed by our 1981 hearings as well as by the inquiries and investigations of the last 30 years.

As I noted, payoffs by company officers to union officials are, under current law, punishable only as a misdemeanor. S. 1785 makes any such violation involving an amount of money greater than $1,000 a felony, punishable by up to five years imprisonment or a fine of up to $15,000 or both.

Another problem I mentioned was the fact that convicted union officials remain in union office until all appeals from their convictions have been exhausted, usually long after the original conviction. This bill attempts to rid labor organizations and employee benefit plans of the influence of these corrupt elements by providing that they shall be barred from union or benefit plan office immediately upon their conviction; that is, as of the day of the guilty verdict, not as of the much later final appeal. In order to be as fair as possible, the bill provides that the salary which a convicted official would receive shall be placed in escrow during his appeals. If the conviction is finally affirmed then the escrowed salary will revert to the union; if, however, the conviction is finally reversed, then the escrowed salary will be paid to the official.

Current law provides that a union officer or an officer of an employee benefit plan shall be prohibited from holding certain union offices for a period of five years. Our investigation and hearings compel us to the conclusion that this is not long enough. Many corrupt officials have enough power to enable them to continue to exert adequate influence over unions and employee benefit plans so as to resume office after a five year lapse and continue on with their corruption. We concluded that a ten year ban would provide enough time for a union to rid itself of the convicted official's influence.

Current law enumerates those crimes for which conviction will result in removal from office and disbarment. S. 1785 leaves the list of crimes as they are presently written, but adds to the end of the list a catch-all phrase requiring removal if the individual is convicted of any federal or state felony involving abuse or misuse of his official position. We feel it is only appropriate that the misuse of a labor office should result in disbarment from holding that same office in the future.

S. 1785 also specifies those employee benefit plan officials who are subject to removal and disbarment for conviction of an enumerated offense. Current law merely refers to any person who has been convicted. S. 1785 specifies the particular officials subject to this provision. The officials listed include any employee benefit plan administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee or representative of an employee benefit plan. As written, the provision would apply equally to union as well as management representatives holding positions of trust as to employee benefit plans.

S. 1785 also enumerates the particular offices and positions which an individual is prohibited from holding if he has been convicted of an enumerated crime. These offices and positions were listed after very careful consideration and were drafted so as not to inhibit the payment of union pensions or to prohibit union membership. The list accurately reflects those positions and offices of trust in unions and in benefit plans which corrupt officials should not only be removed from but should also be barred from holding for ten years.

Finally, the bill clearly delineates the responsibility and authority of the Department of Labor to actively and effectively investigate and refer for prosecution criminal activities relating to union or employee benefit plan corruption. That provision is directly responsive to the many witnesses who, during our hearings, testified that the Department of Labor had failed to act against labor racketeering on the waterfront and elsewhere.

We heard from both federal prosecutors and the FBI that the Department of Labor had taken no role in the fight against criminal corruption on the New York/New Jersey waterfront. A federal prosecutor told us that the Department of Labor had simply not addressed the problem of waterfront corruption in South Florida. The Chief Investigator of the State Attorney's office in Dade County told us that no Federal agency, including the Department of Labor, currently monitors criminal corruption on the Miami waterfront. A witness convicted in the UNIRAC Investigation and familiar with the scope of labor racketeering, suggested that the Labor Department, given its failure to act in the area, should be abolished.

Secretary Donovan, in our November hearings, promised a more active role by the Department in the criminal area. Nevertheless, I have only recently learned that the Department of Labor is now seriously considering transferring many, if not all, of its criminal investigators to some other federal enforcement agency. Clearly, such action suggests that the directive set forth in S. 1785 is necessary to insure an active and effective future role by the Department in the criminal area.

I now understand that there may be some opposition to this last section of the bill as a possible encroachment on the authority of other federal investigative and prosecutorial agencies to pursue criminal allegations. That argument ignores the specific proviso in S. 1785, which we intentionally included to avoid such a result. The bill expressly states:

> Nothing in this subsection shall be construed to preclude other appropriate Federal agencies from detecting and investigating civil and criminal violations of this subchapter and other related Federal laws.

Moreover, testimony before the Subcommittee on Investigations from representatives of other law enforcement agencies clearly supports the need for the assistance of the Department of Labor in this area. When asked whether the Department of Justice is capable of continually policing the waterfront on the level of UNIRAC, a federal prosecutor testified:

> . . . It is impossible, Senator. What has happened is, for instance, the agents and attorneys who were first involved in this investigation and prosecution have gone on into other areas and we have other priorities. It takes an enormous amount of resources to be committed to this matter in order to monitor and police the industry.

That same prosecutor testified that the Department of Labor could play an effective role in the effort against labor racketeering, noting that

> They have the authority to monitor this better than the FBI can in terms of constant monitoring. The FBI, I think, has to devote its resources to too many other areas and the notoriety of the corruption in the waterfront industry and in the ILA . . . should catch the Department of Labor's attention to monitor what is going on in that industry.

In areas of labor racketeering beyond the waterfront, the record of our 1980 hearings on the Investigation of the Teamsters Central States Pension Fund includes a Department of Justice memorandum from then Deputy Assistant Attorney General John C. Keeney to then Attorney General Benjamin Civiletti. In that memorandum, Keeney states that problems in the Justice Department investigation had resulted from the Department of Labor's "failure to refer evidence of criminal misconduct to us." Given those facts, S. 1785 would insure an active and helpful role for the Labor Department in criminal investigations.

Rather than inhibit enforcement by other agencies, the bill would assist their efforts by adding the full resources of the Department of Labor to the fight against labor racketeering.

The general principles that this bill is based upon were the subjects of discussion at hearings held in October and Novmeber, 1981, by the Permanent Subcommittee on Investigations. I am very pleased to state that during those hearings Lane Kirkland, President of the AFL-CIO, generally endorsed S. 1785. S. 1785 was endorsed by George Lehr, the Executive Director of the Teamsters Central States Pension fund. I have since been advised by letter from Mr. Lehr that the Central States Southeast and Southwest Pension Fund has formally endorsed in principle S. 1785. At this time, Mr. Chairman, I would like to insert as part of the record of this hearing a copy of that letter, dated December 17, 1981. In addition, Secretary of Labor Raymond Donovan, at our November hearings, generally endorsed the principles of S. 1785. These endorsements are a great step forward in our efforts to help unions battle corruption in their ranks.

Mr. Chairman, our 30 year history of hearings has made it abundantly clear that the vast majority of union officers, employee benefit plan officials and the rank and file union members are honest, hard-working, law-abiding citizens. Our nation can and should be justifiably proud of the enormous contribution our unions have made to the economic and social strength of the United States. But our hearings have shown that a small group of parasites have fastened themselves onto the body of the labor movement. These parasites are perverting the true interests of the union members they claim to represent through a pattern of payoffs and extortion. The unions have labored to shed themselves of these people, but in many cases they have been unable to do so alone. I believe that the unions need our help here in Congress. I believe that this bill is a major step forward in providing the extra assistance needed for the unions to finally rid themselves of those corrupt officials who are motivated not by the welfare of the American worker but by their own greed.

Mr. Chairman, I would like to submit a copy of my full statement to this Subcommittee for the record of these hearings. I thank you and the Subcommittee for this opportunity to discuss the provisions of S. 1785, and I would be pleased to answer any questions you may have.

CENTRAL STATES
SOUTHEAST AND
SOUTHWEST AREAS
HEALTH AND WELFARE AND PENSION FUNDS

EMPLOYEE TRUSTEES
LORAN W. ROBBINS
MARION M. WINSTEAD
HAROLD J. YATES
EARL L. JENNINGS, JR.

EMPLOYER TRUSTEES
HOWARD McDOUGALL
ROBERT J. BAKER
THOMAS F. O'MALLEY
R. V. PULLIAM, SR.

December 17, 1981

SENATE PERMANENT
SUBCOMM ON INVESTIGATIONS
MINORITY OFFICE

RECD JAN 05 1982

REFERRED________

INITIAL______FILE NO.____

The Honorable Sam Nunn
3241 Dirksen Office Building
Washington, D. C. 20510

Dear Senator Nunn:

Pursuant to my testimony before the United States Senate Permanent Subcommittee on Investigations on October 29, 1981, and my prior discussions with representatives of your staff, please be advised that the Central States, Southeast and Southwest Areas Pension Fund endorses in principle the bill (S.1785) recently introduced by you, dealing with officials of employee benefit plans and providing for removal from office upon conviction of certain enumerated offenses.

Please accept the thanks of the Trustees and myself for soliciting our views in this regard, and let me know if we can be of any further assistance.

Sincerely yours,

George W. Le

GEORGE W. LEHR
EXECUTIVE DIRECTOR

cc: Senator William V. Roth, Jr.

GWL/bc

8550 W. BRYN MAWR AVENUE CHICAGO, ILLINOIS 60631 (312) 693-5300

Senator NUNN. Mr. Chairman, for over 30 years of hearings of the Permanent Subcommittee on Investigations and the committee which, Senator Hatch, you chair and your subcommittee, Senator Nickles, we have made it abundantly clear with this record that the vast majority of union officers, employee benefit plan officials, and the rank-and-file union members are honest, hard-working, law-abiding citizens. Our Nation can and should be justifiably proud of the enormous contribution our unions have made to the economic and social strength of the United States. But our hearings have also shown that a small group of parasites have fastened themselves onto the body of the labor movement. These parasites are perverting the true interest of the union members they claim to represent through a pattern of payoffs and extortion.

The unions have labored to shed themselves of these people, but in many cases they have been unable to do so alone. I believe that the unions and the rank and file need our help here in Congress. I believe that this bill is a major step forward in providing the extra assistance needed for the unions to finally rid themselves of this kind of corruption and rid themselves of these kinds of officials who are not motivated by the welfare of the American worker but, rather, by their own greed.

Senator Hatch, I thank you.

Senator NICKLES. We appreciate both of your inputs and hours that have been involved by yourselves and by your staffs in researching this. I did participate and I can compliment both of you. It was my first experience in seeing Senator Rudman displaying his attorney general skills; he did those exceptionally well, I remember quite well. I think both of you have done an outstanding job as well as your staff.

I might ask you a question. Senators, when did you first learn of the possibility that Labor was considering transferring 90 Inspector General positions to other departments?

Senator NUNN. The first inkling I got of it was my former chief counsel, Marty Steinberg, and I cannot give you the time. This was a couple of months ago, called me in a state of almost total shock told me that, after all we had been through and Secretary Donovan had said they were really going to crack down in this area and so forth and so on, that the Labor Department was now considering a possibility of transferring all of their people over to the Justice Department in this area.

That was the first that I learned of it. But it was my understanding because Marty told me that he had said that would be something that we would be very much opposed to unless, again, that we transferred all this other jurisdiction on the civil side. I understood that they dropped it. And then I just found out very recently, the last 2 or 3 days, that they were talking about it again. In fact, Senator Rudman's statement went further than I had known they were going. I did not know they were seriously considering this. But, when they come in, as I understand they will this morning, and say they are opposed to Labor having criminal jurisdiction, then I suppose logically it flows if Labor is not, then transfer the people over. But they had better realize that, if they get that kind of transfer, they may get a lot more.

Senator **RUDMAN**. I would say that most of the information has been of recent vintage.

I want to add one brief caveat here, and that is simply this. I can understand these jurisdictional discussions that take place between agencies. It reminds me a lot of county sheriffs and State police fighting over the body in a homicide case, who is going to have jurisdiction. The fact is there are enough criminals to go around.

The Justice Department naturally is jealous of its prerogatives, but the law relating to labor relations in this country and employee rights is so vast that it seems to me that, if there is a place where there ought to be at least some criminal oversight and jurisdiction with referral for major prosecution, it ought to be the Department of Labor.

It is my prediction, looking at all of the laws that are involved, that, if in fact they are successful in carrying off this transfer, there will be a lessening, not an increase, of the amount of criminal oversight and prosecution in this area because the FBI, the Justice Department, and all of its various divisions are very, very busy with a number of major jurisdictional problems as it is.

I think the Department of Labor is making a serious mistake if it tries to separate the civil and criminal sanctions involved in this amazingly broad plethora of Federal statutes over which they now have jurisdiction. The fine line between the civil violations and the criminal violations is not that easily discernible by most lawyers. It takes people working in the field at all times.

I just hope that you will examine them very closely because I think this is a very disturbing development.

Senator **HATCH**. It is important to note that we have had 16 major cases alleging impropriety in the Public Integrity Section of the Justice Department. As you know, we have a bipartisan committee that has been appointed to look into that in the Judiciary Committee. I am chairman of that, and Senator DeConcini is the vice chairman.

There has been some real irritation around this town and around this country with some of these cases. I might add that there is a real question whether either agency is really doing its job in this area. That is one of the things that I am worried about.

Do you share that same fear and that same worry, that same worry that I have?

Senator **RUDMAN**. I certainly do.

Senator **NICKLES**. Given the review of all the investigations that your subcommittee has performed, I think, Senator Nunn, you mentioned that, really, Labor has contributed very, very little in several of the major investigations that were conducted. Is that correct?

Senator **NUNN**. That is correct. That is what we found in the waterfront investigation. We even had a witness testify that they had gone to the Labor Department telling them about that extensive corruption in the workmen's comp, which you are so familiar with. And the Labor Department just threw up their hands and said they could do nothing about it.

I do not know how high it went up in the Labor Department. I do not know whose attention it came to, but that is the general attitude in the Labor Department. And, of course, we have got the most glaring example, which we have not talked about in this testimony: the Teamsters Union investigation in which they just almost ignored and went to great extent to ignore the criminal violations. Also, the Labor Department decided by directive from people close to the top that they would not undertake third-party investigations. In simple terms, that means the people who derive the benefit of the Teamsters loans were never investigated. And those were usually the people who were alleged to be organized criminals.

Senator HATCH. Who made that decision?

Senator NUNN. I will have to go back and get the record and send it to you. It gets a little bit nebulous, but it came from very high levels of the Department of Labor. It came after we had been assured that third-party investigations were going to be pursued.

Senator HATCH. Was it in the Solicitor's office?

Senator NUNN. I am sure that the Solicitor's office had a great deal to do with it. I think that probably was where it came from.

Senator NICKLES. But is it not true, concerning the Central States investigation, that the Federal Government spent millions of dollars? I am just recalling this from participating in a minor degree with your committee. But they spent millions of dollars and compiled unbelievable evidence, et cetera, that basically was just not brought forth, was not executed, was not prosecuted, and basically allowed to be dissembled or disintegrate or to be lost or files detroyed.

I am concerned about it. I am concerned about, one, Labor's past mistakes but, also, what we can do to move forward, not just to be looking at past mistakes.

I would compliment both Senators Rudman and Nunn for the fact that, one, your legislation has brought this together. We will have Justice and Labor before us today. My concern is inactivity. I think it has to be frustrating for the strike force to spend untold amounts of money and hours, in some cases in not too healthy or secure investigations involving organized crime, and compile quite a backlog of evidence, possibly have prosecutions, in effect, take place and yet still have those officials still serving in their same position on the union or in their same position receiving compensation, still running a particular local. I think that is deplorable and needs to be changed.

I think the thrust of S. 1785 will be to make some of those changes.

Back to the question of Labor versus Justice, the real important thing is that justice will be served. Under present law, the primary jurisdiction for Landrum-Griffin, for ERISA, is under the Labor Department.

Senator NUNN. That is correct, Mr. Chairman. I think it is important to stress again that the prosecution in these areas will still take place in the Department of Justice. It is the investigation that will take place in the Labor Department up to the stage where they decide it is time to turn it over to the Justice Department. In the past, every time you get to a criminal point they back away from it. They shy away from it, and then nobody investigates it. There is a huge void there.

Senator Rudman stressed the point a few minutes ago that I think needs to be stressed again. That is that, if the Labor Department does not do this, nobody does it. Justice does not have these records. They do not have access to all the pension violations.

Again, there is a certain logic that all of this should be in the Justice Department, but only if you transfer the civil responsibility the Labor Department now has in these areas. Again, that probably would be tantamount to abolishing the Department of Labor.

I would not exclude that possibility, but I do not know that it is the No. 1 thing we ought to look at.

Senator NICKLES. Senator Hatch?

Senator HATCH. On this same point, do your colleagues feel that the Labor Department has cooperated with the Permanent Subcommittee on Investigations during this past year?

Senator NUNN. Secretary Donovan came over and made very explicit and very firm pledges about his intentions in this area. And that is why I was so astounded to find that, as Senator Rudman said, they are now talking about transferring all of these investigators over to the Department of Justice, which would directly contradict everything I understood him to say.

But I had been very encouraged about the new attitude of the Labor Department. I must say I have to reexamine that now.

Senator HATCH. Where, in your opinion, have the problems emerged at Labor?

Senator NUNN. In terms of——

Senator HATCH. In terms of what we are trying to get to here, in terms of the investigation, the cooperation——

Senator NUNN. I think I would have to say, if I had to pinpoint one area—well, it is an attitudinal problem. It goes throughout the whole Labor Department.

There are many good investigators. There are many people in the Labor Department who are willing to take on this area. There are many people who are frustrated because they feel like they are discouraged. It has come from an attitudinal problem that has permeated all the way down from the top. If there is ever an area that we could say it has been a bipartisan kind of fault, it is in this area. It has been under Republican administrations. It has been under Democratic administrations.

Our investigations primarily took place under a Democratic administration with a Democratic Secretary of Labor. But we overlap back into other areas, and I have been into those enough and read the record enough to know that there is one thing that does not change. And that is the behavior of the Department of Labor. And that is independent of who is in the White House.

Senator RUDMAN. Senator Hatch, let me add my analysis of your question which is, where is the problem. From listening to these hearings and reading the hearing records over the past year, I would say that the problem lies with the fact that responsibility seems to be very diffuse in the Department of Labor for this particular problem. There seem to be many tentacles within the Department.

What I would like to see, what I would do if I were the Secretary of Labor would be to find one tough, mean prosecutor and put him in charge of that Department, give him the responsibility, and say go with it: one man with the responsibility to decide what to do.

That is not the case there today. And that in fact is not the case in most of our Government.

Senator HATCH. Are you and Sam aware of the backlog problem in the Solicitor's Office on the pension cases? There appears to us to be a tremendous backlog problem with all kinds of other difficulties surrounding that problem especially on pension cases. Are you aware of those?

Senator RUDMAN. I am aware of them. I am certainly aware of them. But I would say that one of the most salutary ways to have fewer cases is to have some successful, vigorous prosecutions with stiff penalties.

Senator NUNN. I agree.

Senator HATCH. Are you aware that the statute has run on a number of the cases?

Senator NUNN. That was one of our——

Senator HATCH. When I talk about statute, I mean statute of limitations.

Senator NUNN. That is the problem. It has run on most of the things that would be involving third parties.

Senator HATCH. And some of them are pretty serious problems. And some of them amount to wholesale ripoff of the working men and women of America, who have been paying into those funds on a good-faith basis.

Senator NUNN. On the Teamsters investigation, it was almost as if the Labor Department—and I say almost because I never did find anything this direct. But it was almost as if they said, "Anytime you fellows investigating out there get anywhere near organized crime, back off; we'll find a way to exclude that."

It was almost that way. I do not allege that it was a conspiracy. I do not allege that, but I think it is an attitudinal problem that goes very deep and affects our very ability to control organized crime in the labor movement.

I just want to read one thing into the record that we received. It is a January 31, 1978, memo from Benjamin Civiletti and John Keeney in the Justice Department. I think this is a little bit of history that needs to be emphasized. I quote from page 3 of that. It is in our hearing record:

"With respect to the joint Teamsters investigation, the Criminal Division is designated as Justice Department's representative. Through the early stages of the investigation and continuing until August, September of 1977, the joint concept worked well. Labor's investigative staff was in daily contact with our people. Matters were referred to us for criminal investigation. We were kept apprised in advance of any major civil remedy to be demanded by Labor. However, over the course of the fall and winter, the personnel and structure of Labor's efforts changed. Labor no longer has the investigative manpower or leadership that was originally available. We are not apprised of the current size or makeup of this staff or what it is doing. In fact, working members of the staff have been instructed not to discuss the investigation with us. Additionally, we were advised only yesterday by Labor that over a month ago the pension fund trustees had resolved to deny the task force investigators access to its records. This represents a complete turnaround for the fund," so forth and so on, end of quote.

[The memo referred to follows:]

JAN 31 1978

Benjamin R. Civiletti
Assistant Attorney General
Criminal Division

Typed: 1/31/78
JCK:PW:DJS:mer

John C. Keeney
Deputy Assistant Attorney General
Criminal Division

Status Report on Labor Department-Criminal Division Investigative Relationships

Recent developments in our relationships with the investigative arm of the Labor Department and with the Solicitor of Labor's office prompt me to apprise you of what I believe is a deteriorating and potentially serious situation. As you know, our working relationships with the Labor Department arise from the Secretary's investigative responsibilities under the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401 et seq. (LMRDA), the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 et seq. (ERISA), two memoranda of understanding with respect to investigations of acts made criminal by these statutes and a third memorandum signed in December of 1975 with respect to a joint Justice Department-Labor Department investigation of the Teamsters' Central States Pension and Health and Welfare Plans. Until the past year, our working relationships under these memoranda have been very satisfactory. However, during this period, three distinct problems have arisen which present grave difficulties and which presently appear not to be resolvable at the operational level. These problems are:

1. The assignment of investigative manpower to Organized Crime Strike Forces.

2. The inability of our Government Regulations and Labor Section to obtain information indicating potential crimes or criminal misconduct under ERISA from the Labor Department.

3. A total shutdown of communications between our representatives on the Teamster investigative Task Force and Labor's representatives.

For the past several years, the Labor Department's budget has contained provisions for the assignment of from 65 to 75 Compliance Officers (Labor's designation for investigators) to our Strike Forces. For over a year, we have been complaining to Labor that it has not been providing us with anything like this kind of support. Over the last six months, Congressional Oversight Committees have been looking into this problem and during November and December some very sharp differences between the two Departments were aired during public hearings. We have very recently learned that Labor has budgeted only 15 investigators to us for the next fiscal year and that further Congressional hearings will be held on the investigative jurisdiction and manpower problems. I believe steps should be taken to iron out this problem before we are forced to air it at Congressional hearings.

Our two other problems arise under the provisions of ERISA, which contains broad investigative and civil litigative provisions. The Act grants the Secretary of Labor authority to investigate civil and criminal violations and to file civil suits subject to the direction of the Attorney General. It also obliges the Secretary to furnish the Attorney General "any evidence which may be found to warrant consideration" for criminal prosecution. Our problems arise from what we consider Labor's failure to refer evidence of criminal misconduct to us or, if it does refer information to us which indicates potential civil as well as criminal misconduct, our inability to agree upon a course of conduct that will enable the two Departments to pursue their separate remedies jointly.

Under the auspices of operational guidelines set forth in the memorandum of understanding respecting the Teamsters investigation, a working group headed by Tim Baker and the Solicitor of Labor has been trying to resolve these problems as well as those related directly to the Teamsters project. At meetings of this working group during November and early December, it was agreed, we thought, that Labor would take appropriate steps to insure that we received prompt notification of its civil investigative findings. This has not occurred.

With respect to the joint Teamsters investigation, the Criminal Division is designated as Justice's representative. Through the early stages of the investigation and continuing until August or September of 1977, the joint concept worked well. Labor's investigative staff was in daily contact with our people; matters were referred to us for criminal investigation; and we were kept apprised in advance of any major civil remedy to be demanded by Labor. However, over the course of the fall and winter, the personnel and structure of Labor's efforts changed. Labor no longer has the investigative manpower or leadership that was originally available. We are not apprised of the current size or makeup of this staff or of what it is doing. In fact, working members of the staff have been instructed not to discuss the investigation with us. Additionally, we were advised only yesterday by Labor that over a month ago the Pension Fund Trustees had resolved to deny the task force investigators access to its records. This represents a complete turn around by the Fund, as we have had complete access to its records since the investigation began, and certainly should have been brought to our attention at once.

In December, we were advised that the Secretary had ordered a 45 day review of the entire investigation and that he would determine at that time what course the investigation would take. During the 45 day period we were not able to ascertain what was being reviewed or proposed. We have been advised that the Secretary has decided upon a course of conduct but we have not been apprised of its nature. Rather, we were told the Secretary would discuss it with the Attorney General and after a decision had been reached at that level, we would be informed of the results. We are at a loss as to how any decision reached in this manner can be called a joint decision and we, of course, can not apprise the Attorney General of recent developments so that he may have the benefit of our thoughts on any decision to be reached.

Senator NUNN. And then on top of all that they denied—at the top ranks of the Labor Department, Solicitor's Office—denied their own investigators subpena authority.

Senator NICKLES. That was written when?

Senator NUNN. January 31, 1978.

Interestingly enough, the Justice Department might be asked if they are reversing the position taken by Civiletti at that time. I quote him again. On the question of ERISA, he says, and I quote:

> The act grants the Secretary of Labor authority to investigate civil and criminal violations and to file civil suits subject to the direction of the Attorney General. It also obliges the Secretary to furnish the Attorney General any evidence which may be found to warrant consideration for criminal prosecution.

That is pretty explicit from a former Attorney General as to what the existing law does.

Senator HATCH. We have found that there are in excess of 100 cases down there, actually in excess of 120 cases down there that merit serious investigation, a number of which the statute of limitations has been allowed to lapse and many of which involve very serious allegations. I think the first hearing we are going to hold on one of these cases will be toward the end of this month, February. At least we hope we can start into those about that time. All of them take a tremendous amount of effort, as you know, because of the work that you have been doing.

We do not have nearly enough investigators up here on the Hill to follow through on these types of problems.

Senator NUNN. Mr. Chairman, on that point I am informed that, when Senator McClellan had his investigations back in the early sixties, he had a combined force of close to 150 lawyers and accountants.

Senator HATCH. See, we have like six at the present time, the Labor Committee, and we just cannot hardly do the job that needs to be done. We might ask for your cooperation in going into the Rules Committee and asking for more help from an investigative standpoint. I think we can clean up some of this mess.

I want to pay special tribute at this particular point to the present Solicitor, Tim Ryan. We have had our difficulties over this last year, but he has come in and said he is going to fully cooperate with us and has been as of the last month or so. I am very pleased with that because it has taken us a long time to have them realize down there that our goals and motivations are good goals and motivations to try and protect the workers of this country.

I suspect you went through that give-and-take period as well in trying to get some of the materials that you were able to get.

Senator NUNN. We subpenaed the Labor Department to get a particular record which we could not get any other way, being the first time we ever had to subpena a governmental agency.

Senator HATCH. Was that Kotch-Crino?

Senator NUNN. That was the Kotch-Crino report. Until we subpenaed it, there was nobody in the Department of Labor that could find it.

Senator HATCH. I went through a similar problem with that. Of course, the reason they could not find it is because, as I understand it, much of it was destroyed by a representative down there at the Department. Is not that correct?

Senator NUNN. It was so sensitive it could not be discussed within the Department of Labor, and it could not be turned over to our subcommittee. And we later found that it was put in a trash can.

Senator HATCH. As a matter of fact, some of the people criticized very dynamically in the Kotch-Crino report, without getting into the classified nature of that report—some of the people who were the most criticized are still down there at the Department of Labor and at least one in a policy position. Are you aware of that?

Senator NUNN. I am not aware of the particular individual, but I am aware of it in general, yes.

Senator HATCH. Are not you concerned about that?

Senator NUNN. Yes.

Senator HATCH. I am very concerned about it.

What I am finding, I had a major cabinet-level official tell me not too long ago that, other than the top 25 people around him—and he is talking about thousands and thousands of people that work under him—that he just could not trust almost anybody else in the Department. They would get mail that should go out within a few weeks at the very latest, and it would be 2, 3, 4 months; and then they would give him blank stares rather than do the job that should be done.

Have you found that also as you have been working with the bureaucracy?

Senator NUNN. We have run into a good bit of that. The most incredible thing we ran into on the Teamsters investigation was the particular individual who headed that investigation for about 2 years was under the impression that the Department of Labor top officials had entered into a, "phantom agreement," with the Teamsters Union excluding huge areas of the investigation from Labor's jurisdiction. And he operated his team of investigators under that premise for approximately 2 years.

It later turns out that all of that about the phantom agreement was denied. But whether there ever existed an agreement or not is not the point. The top man investigating thought there was.

Senator HATCH. I might add that that man is still there at the Department of Labor, and no change has really been made as far as we can see.

As serious as the allegations are in Kotch-Crino—and you and I both know they are quite serious because I have read the full report myself. Again, I guess it was Mr. Ryan and the Justice Department gave that to me to read as committee chairman but would not allow me to keep it. But, as serious as those allegations really were, I do not see any real effective resolution of those allegations.

Senator NUNN. Mr. Chairman, I think it would be interesting to ask Justice in even a closed hearing or perhaps an open hearing as to what has happened to the allegations on that because we sent the whole Kotch-Crino report to the Justice Department, or we asked that it be sent. Labor sent it.

Senator HATCH. That is one thing I want to get into because I am aware that you did that. I am aware that you have done a tremendous statesman-like work with regard to Kotch-Crino. Yet, as serious as those allegations are, a number of the people who were criticized—and I mean seriously criticized—in that report are still just doing business as usual down there at the Labor Department. I might add we have not received a heck of a lot of response from the Justice Department as of this date.

I have to admit it is overwhelming to come in with all the problems they have and in 1 year be able to respond to everything, but it is getting down to rent-cutting time on Kotch-Crino as far as I am concerned.

Senator NUNN. It has been a long time.

Senator HATCH. Has the name of Monica Gallagher come up in the Solicitor of Labor's office in your investigation?

Senator NUNN. Yes. Ms. Gallagher was in the Solicitor's office and participated very vigorously in the Teamsters investigation. She came up in the context of our hearings. In fact, she testified before our subcommittee.

Senator HATCH. I have some other questions, but I just wanted to interrupt for a minute to get through that line of questioning. I appreciate our subcommittee chairman allowing me to do that.

Senator NICKLES. I think there is a lot of value in the legislation that we have before us today. Hopefully, since there has been a certain lack or inactivity of the Labor Department for some time to do what many of us felt they should concerning Landrum-Griffin enforcement and enforcement of ERISA laws, that we bring those to light and let it be known, as you have done in your subcommittee that you expect action. We can also let it be known that we expect some results.

There are a couple of other things on the substance of the material legislation before us today. Senator Rudman, you mentioned in your statement part of the legislation is to increase the amount of time that a person would be disbarred from holding office from 5 years to 10 years. Lane Kirkland mentioned, I think, some idea to have some flexibility in that to where it would not be a mandatory 10 years.

Do you think that should be definitely held to the 10 years or possibly anything up to 10, I think, as he recommended? Right now it is a mandatory 5 years.

Senator RUDMAN. Well, of course, I was present for his testimony. He made an analogy to criminal sentencing, where you have a sentence of up to so many years. I do not agree with that in this particular case. I think we have a history replete with abuse, replete with corruption continuing after conviction. I think that the punishment in this case fits the crime.

I think the 10 years is not too much to ask. In fact, in my view it might be too little.

Senator NICKLES. Senator Nunn?

Senator NUNN. I think Lane Kirkland makes a valid point that is worthy of consideration. At this juncture, I do not agree with that point though because I think there have been too many cases where persons who were finally convicted, put in jail and debarred for 5 years, let it be known through associations, consulting firms, and so forth, that they were going to come back. The fact that they were going to come back gave them a great deal of de facto power. That period of time of 5 years is a pretty brief time.

I also think we have not seen a whole lot of vigorous enforcement from the benches of America and the judicial branch of America in terms of sometimes meeting out sentences that fit the crime, where people who have been given a great deal of authority, responsibility, and trust by the rank and file have abused that. I think this is an area of gross abuse of trust.

So, I think it is a point worthy of consideration. He is talking about really making it something the judge can decide rather than having it written into law as a mandated 10 years. But at this point in time, I would stick with our recommendation.

Senator NICKLES. Also, in S. 1785 we call for increasing the misdemeanor, if convicted, to a felony if a person is convicted of trying to buy labor peace. That would be increased to a felony. I believe we will receive testimony from the administration that should be handled under the criminal code.

Do you have any comments?

Senator NUNN. In this area, I really came down pretty strong on this jurisdiction question because I feel strongly about it. I find it incredible that Justice, seemingly to me, has now reversed their position. I think they are really bowling over the Labor Department on this one. I think that the agreement that has been reached has been Justice's position, from what I understand. But on these other recommendations, for instance the one you just talked about, these are in the area of technical changes in the statute, and I think we ought to be flexible on that. I would get my staff to look into that and work with yours. At this stage I do not know enough about that recommendation to be able to give you a definitive answer.

Senator NICKLES. There will be a need for our staffs to work with Justice and the Labor Departments. We are amending Landrum-Griffin, and ERISA and we will be cleaning up the technical parts of these acts. I do not know what the outcome will be in the Criminal Code bill that will shortly be before the Senate, or what its possibilities are. This would be a minor amendment to a very massive bill. I am somewhat concerned it might be lost in the shuffle if we are not careful.

Senator NUNN. I agree with that.

Senator NICKLES. We will have to watch it.

Did you have any additional questions, Senator Hatch?

Senator HATCH. I would like to just ask a couple more. I know both of you have to get to your very busy duties.

In the course of your investigations, did you find that the department's handling of the Teamsters case was not unique but reflected a general reluctance not to pursue criminal investigations?

Senator NUNN. I think that is a fair statement, Senator Hatch. I think it is a historic position. The Teamsters investigation, unfortunately, fit into that historic pattern. The thing that was so disconcerting to me about that Teamsters investigation, though, after we got into the multitude of problems in our oversight hearings last year was the fact that I was here when Senator Robert Griffin from Michigan made an effort to have a special McClellan-type committee, either the PSI or another committee, that would be fully staffed. He had several million dollars that was going to be in the resolution, lawyers, accountants, and so forth. And we deferred that because we were given firm assurances by the Labor Department in 1975 and 1976 that they were going to have the kind of investigation that had never before taken place at Labor.

It was against that background of assurances and then failed performance that made it so disconcerting.

Senator HATCH. To what really precisely do you attribute DOL's reluctance to pursue criminal investigations? A lack of legal authority? Lack of manpower and budget resources? Or just an indifferent attitude by the DOL leadership?

Senator NUNN. Probably a combination but I would say more an attitudinal problem that anything else, and it goes way back. It is just as if the Labor Department—you see, the Labor Department is in a position of trying to arbitrate and trying to have good relationships with organized labor. They just seem to think that, if you try to root out corruption in organized labor, you offend organized labor. I do not agree with that. I think the rank and file of this country want the corruption to be weeded out.

Senator HATCH. I do, too. I think they are sick and tired of it all across this country and sick and tired of seeing their pension funds eaten up, and that is only one area, by people who really should not be doing what they are doing with them.

I have to admit there are many honest unions and there are many honest union leaders who are trying to do what is best to magnify those funds and benefit them. But it is some very outrageous cases that we are starting to find where there have been some tremendous ripoffs of the rank-and-file men and women's contributions to those pension funds and what should have been done with them.

Senator NUNN. I get letters every day and every week from rank-and-file people who are thanking me and the subcommittee for the efforts we have made.

Senator HATCH. We are having union leaders, local union leaders coming into our office and saying thank goodness somebody is getting into this because we are really concerned and giving us information for the first time in years. I think that that is a good thing, too.

Both the Department of Justice and the Department of Labor recommend in their testimony that the bill's sections which give the Secretary of Labor responsibility to direct and investigate criminal violations be deleted. Now, you have alluded to that. But what was the reason for including this provision in the bill, one more time?

Senator NUNN. That goes to the very heart of the bill because of this historic reluctance of the Labor Department to get involved in these.

This memo, I think I mistakenly said it was a Civiletti memo, it is a John Keeney, Deputy Assistant Attorney General memo to Civiletti that I would hope we will put in the record. As it points out, the law already gives the Labor Department that kind of authority. But every time you have a question, every time you have a hearing, they come up and say: We really don't think the Congress intended for us to get into this.

This bill is really not a departure from what I read in the existing law, but it is a strong emphasis that we want the law to be followed.

Senator RUDMAN. Senator Hatch, if I might add to follow on to that. Anyone who has done any amount of investigations into any corrupt areas at all will first find that the trail is led by civil violations. It is the civil violations that tend to lead you to criminal violations. This is quite often the case, not the other way around.

Now, if you start to have inefficiency, the best way you are going to have inefficiency is to have essentially different agencies following different tracks, which in many cases really ought to be very close together and parallel.

It seems to us that what we have here is a situation where these investigations should be done by the Labor Department. Obviously, when you discover something that looks like it is going to lead to indictment, it goes to the U.S. attorney in the appropriate jurisdiction or to a strike force if that is the case.

I do not really understand the rationale, the logic from an investigative point of view, from a prosecution point of view, of separating this authority for investigation in these two areas. We think it is critical. And that is why it is there.

Senator HATCH. The PSI investigation was quite critical of DOL's refusal to pursue third-party investigations against people who obtained loans from the Teamsters fund, for just one illustration. This apparently was the result of the action by the solicitor's office, or at least that is the way we read it.

Could you elaborate how such investigations would have aided in the preparation of criminal and civil cases? Under the current administration has the department changed this policy on third-party investigations?

Senator NUNN. Let me get right to the heart of the matter, Senator Hatch. When you exclude third-party investigations from an investigation like the Teamsters Central States Fund, you are excluding the people who got the loans. You are excluding the people who got the money. If there is going to be any kind of recovery against people who have abused the pension fund on behalf of the rank and file, you have got to go after the people with the money. And the people with the money were excluded.

Senator HATCH. I might add, to a degree I think we on the Hill have been excluded from our investigations up until recently. It is time that that changes around, too.

I just want to personally express my gratitude on behalf of our committee and, I think, the people of this country for the good work that you people have been doing on the Permanent Subcommittee on Investigations. I could not be more proud of the number of Senators than I am of you people. I can tell you that what you have done, I think, has helped everybody in this country. It certainly has been of help to us in trying to get into the investigatorial area that we are trying to do, and that is the whole, broad-based area of the Department of Labor. I can tell you it has been one heck of a year trying to get that opened up so that we can start looking at it on behalf of the people of America and on behalf of the workers of America. We have just had one heck of a bad time. I will say that at least we believe it has changed, but this next year is going to tell the truth whether it has changed or whether it has not.

We have uncovered enough information that, if we had 150 investigators, I think it would take us somewhere between 3 and 10 years to be able to just resolve some of the issues that we have been able to find as of right now, either for good or for bad.

Do you think that is an exaggeration or just the tip of the iceberg that you have uncovered? Would not you say there is an awful lot out there for us to investigate?

Senator **NUNN**. I think there is an awful lot out there. I think this is primarily an executive branch responsibility. I have been very disappointed the executive branch of government has not fulfilled their responsibility in this area. At some point in time we may have to undertake the kind of massive investigation that Senator McClellan did. But it would not be because that was the most desirable place to have that kind of investigation. It would be because of a default, a continuing default on the part of the executive branch of government.

Senator **HATCH**. What is your opinion? My personal opinion is we are there, that that has to be done.

Senator **NUNN**. I have kept hoping that we would be able to turn the departments around. In the Congress of the United States, we can have a one-time investigation and we perhaps can clean it up for a while, but eventually it will come back unless there is a vigilance on the part of the executive department which has the people on a permanent basis. So, I still would hold out some hope they would undertake their own responsibilities. But I must say, based on what Senator Rudman said this morning and based on my information about the attitudes of Labor and Justice that I thought were changing, that I am having second thoughts about it. We may very well have to go in that direction, Mr. Chairman.

Senator **HATCH**. Thank you. I want to compliment both of you for the work you have done and other members of your committee and particularly Senator Roth for the efforts you have all put forward.

I hope that our two committees can cooperate together because you have done some very good and interesting things, and we hope to continue to do the same.

Senator **NICKLES**. Thank you very much for your cooperation.

Senator **NUNN**. Thank you very much.

Senator **NICKLES**. Our next witness will be Tim Ryan representing the Department of Labor.

Mr. Ryan, as Solicitor, you appear before this subcommittee. We appreciated your appearing before the Permanent Subcommittee on Investigations earlier last week and certainly for this statement. As I am sure you are aware, your ears were open, there has been some discussion about the inactivity in the Labor Department in the past. I can also state with some pleasure that having discussed at different times with Secretary Donovan a resolve, and this certainly was found to be the case at the Permanent Subcommittee on Investigations, a very strong resolve to do everything within the Labor Department's legal authority to see if we could not clear up labor racketeering in any way, shape or form. And I compliment him for that and for his statement, and appreciate your input before this subcommittee today.

STATEMENT OF T. TIMOTHY RYAN, SOLICITOR, DEPARTMENT OF LABOR

Mr. RYAN. I am pleased to appear before the committee and to present to you the views of the Department of Labor on S. 1785. I request that the Secretary's statement be entered into the record.

In his statement, the Secretary notes his strong support for legislation which will strengthen our abilities to rid employee benefit plans and labor organization of corrupting influences. The millions of people who either belong to unions or are participants and beneficiaries of plans or both should be secure in the knowledge that their affairs are being managed by honest, trustworthy individuals.

Therefore, we urge the Congress to pass legislation to strengthen the provisions of the laws which disqualify people convicted of various crimes from serving in certain positions relating to benefit plans and labor organizations.

S. 1785 is a solid piece of legislation. The Secretary, in his statement, highlights some sections which we believe should be modified. The Department of Justice will discuss other provisions which are of concern to them.

But, all in all, I can tell you that the administration strongly supports the basis of S. 1785, and we stand ready to work with you to fashion the most effective legislation possible.

To my left I have with me Bob McGee, the Deputy Inspector General of the Department of Labor. He and I will be glad to answer any questions you or Senator Hatch have at this time.

[The prepared statement of Secretary Donovan follows:]

STATEMENT OF RAYMOND J. DONOVAN
SECRETARY OF LABOR
SUBCOMMITTEE ON LABOR
COMMITTEE ON LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

February 3, 1982

Mr. Chairman and Members of the Subcommittee:

I am pleased to be able to present to you the views of the Department of Labor on S. 1785, the "Labor Management Racketeering Act of 1981," which I consider to be one of the most important pieces of reform legislation affecting American workers to be considered by the Congress in a number of years.

The labor movement is an essential element of the American society, and the day-to-day lives and futures of American workers and their families depend on the integrity of officials of labor organizations and employee benefit plans. We, as responsible government officials, must insure that there are stringent enforceable and enforced provisions of law which afford protections to members of unions and participants and beneficiaries of plans. Our laws must be obeyed. If pension plan and union officials do not obey them, these people should not be allowed to continue in their positions of responsibility.

S. 1785 is intended to greatly enhance the ability of the Department of Labor to assure members of labor organizations and participants in employee benefit plans that the extremely important matters affecting their daily working lives and their retirement years are managed by people who are worthy of the trust placed on them and who will make decisions without regard to their own personal benefit.

The millions of participants and beneficiaries of employee benefit plans in this country should have no reason to doubt that their funds will be invested, controlled, and used by individuals who will not compromise the trust and responsibility placed on them. In like manner, the multitude of workers who belong to labor organizations should have no reason to doubt that union matters are being handled by people who have the interests of the workers in mind, without thought of personal profit. I believe it is imperative that we put any existing doubts to rest.

The people of this country have every right to expect that contributions made to labor organizations and employee benefit plans will be used solely for intended purposes, to defray legitimate labor organization expenses and to provide benefits and administrative costs of employee benefit plans. Employees should have certain knowledge that contributions will be put to no other purpose.

Mr. Chairman, as a general statement, S. 1785 would amend the Employee Retirement Income Security Act (ERISA) and the Labor-Management Reporting and Disclosure Act (LMRDA) to strengthen their prohibitions on individuals who have been convicted of certain crimes from serving in positions of trust or influence relating to employee benefit plans and labor organizations. The Administration strongly supports legislation to effectuate this goal.

I would like to discuss some of the most important features of S. 1785 and highlight some of the bill's strengths and weaknesses as viewed by the Department of Labor. However, before doing so, I would like to note that our review of the predecessor to the pending legislation, which was numbered S. 1163, identified a number of significant problems. We believe that the redraft of the legislation, S. 1785, has resulted in a far superior product from both legal and enforcement standpoints. There remain a few areas of concern, some of which I will discuss. The Department of Labor, and I am sure other appropriate Federal agencies, will work with this Subcommittee in order to develop the most effective legislation possible to ensure that labor unions and employee benefit plans are rid of corrupting influences.

One of the most important features of the legislation is that the disqualifications on the individuals' participation take place at the time of conviction. Under the present relevant sections of ERISA and LMRDA, the disqualification occurs on the date of conviction *or* the final sustaining on appeal, whichever is later. As I am sure the Members of this Subcommittee are well aware, the appeals process can consume a lengthy period of time. Two years is not unusual. Under the present statutory formulation, convicted individuals--people convicted of robbery, burglary, fraud, embezzlement--can continue to exercise great influence over benefit plans and labor unions and their funds in their formal capacities for months, even years, until the appeals process is exhausted. I believe that this is intolerable and should not be allowed to continue.

Mr. Chairman, inherent in our judicial system is the principle of presumption of innocence until there is a finding of guilt by a court of law. An individual should not be disqualified by law from a union or benefit plan position because of mere accusation. However, once a conviction is obtained, the presumption of innocence disappears. The person is entitled to use all avenues of appeal available; however, during that time he should not be allowed to serve, having been found guilty by a judge or jury of a disqualifying crime.

Let me give you an example of what has occurred in the past due to the present loophole in the law.

There is a man in Florida who at one time was the President of one union local, the manager of another, President of the District Council, and also a trustee of a benefit plan fund. He was convicted of embezzling funds from six labor organizations and funds. While these matters were on appeal, he remained in a number of the positions until the convictions were eventually sustained. He was later further convicted of illegally transferring funds and has since been indicted for still other allegedly illegal acts occuring during the appeals period. It is estimated that $1 million was taken during this period.

Unfortunately, this is not an isolated case. We could document others for you. They stand as testimony to our conclusion that the statutory disqualification should begin immediately at the time of conviction so that further intolerable instances such as these can be avoided.

S. 1785 retains the present lists of crimes under both ERISA and LMRDA for which convictions result in the statutory disqualifications. We do not agree with this approach. The list under ERISA is much broader than under LMRDA. People convicted of a number of crimes would be disqualified from serving employee benefit plans, but not labor organizations.

We believe that if a crime is considered to be of sufficient gravity to disqualify a person from serving an employee benefit plan, it should also disqualify the person from a labor organization position. The need for honest, trustworthy people in important union positions is equal for positions under both statutes. Therefore, we recommend that all the specific crimes which presently appear in either statute should be combined in a single list and made to apply to both. We also suggest the addition of conviction for income tax evasion and the giving of false information to government agencies. We believe that disqualification for all of these crimes are relevant to the effective, honest operation of a union and the administration of a benefit plan.

In addition to the specific lists of disqualifying crimes, the bill includes language which would further disqualify an individual convicted of "any other felony involving abuse or misuse of such person's labor organization or employee benefit plan position or employment." Such disqualifying crimes should not be limited to felonies; misdemeanors should be included as well. Many crimes characterized as misdemeanors are of a sufficient serious nature as to justify disqualifications. Also, use of the term "felony" could very well result in an uneven application of the law because states differ as to their classifications of crimes. What is a felony in one state could very well be a misdemeanor in its adjoining neighbor. A person convicted in one state of a certain crime may be disqualified while another in the next state convicted of the identical crime, involving the identical facts, may not be.

We also question whether the unspecified crimes should be limited to the individual's union or plan position or employment. A person convicted of an unspecified crime would not be disqualified from serving--no matter how heinous or how related to that person's activities for the plan or union that crime may be--if it did not directly involve the individual's position or employment.

Therefore, in addition to the bill's unspecified crimes provision, we would favor language providing for the disqualification of an individual convicted of "any crime involving the abuse or misuse of a fiduciary responsibility related to a person's labor organization or employee benefit plan position or employment." We believe that this framework is of sufficient breadth to disqualify those individuals who rightfully should be prohibited from serving employee benefit plans and labor organizations, while protecting those to whom disqualification should not attach.

S. 1785 considerably broadens the union and benefit plan positions from which convicted individuals would be disqualified. LMRDA is presently narrowly drawn and prohibits these people from serving labor organizations in only limited, although important, capacities. ERISA has a broader list, but not as broad as S. 1785. Embodied in the new legislation is the recognition that people other than administrators, trustees, and consultants of plans, and officers and directors of labor organizations, for example, exert considerable influence over their operations.

For example, S. 1785 recognizes that companies providing goods and services can be extremely influential and can be in a position to manipulate funds or to make very important decisions concerning them. S. 1785 would disqualify an individual who is an officer, executive, or administrative employee of a business entity which provides substantial goods or services to a plan or union as well those whose positions entitled them to a "share of the proceeds" of such an entity. It would further disqualify individuals who are in capacities which involve decisionmaking authority, custody, or control over the funds of a union or plan. We believe there are some problems with the drafting of the relevant provisions. However, these additional disqualifications would be important changes in the laws, and we wholeheartedly support their intent.

We also note that the bill deletes the "clerical/custodial" exception from LMRDA. The stories are legion of how this exemption has been used as a ruse by labor organizations to hire otherwise disqualified individuals as clerks or janitors but who actually serve in decisionmaking capacities, and at extremely high salaries. Such practices cannot be allowed to continue, and we therefore support the deletion of the exception from LMRDA.

It is important that the bill be clear that any individual who has been convicted of a disqualifying crime prior to the date of enactment would be covered by the bill. The millions of people who are presently covered by plans and who are members of unions should be afforded the immediate protections of the legislation.

And this is a point which I made before the Permanent Subcommittee on Investigations when I testified in October and which I think is important to reiterate. We do not consider this legislation punitive in nature. We are not imposing additional penalties on convicted people. It is up to the courts to fix fines and/or imprisonments for their crimes. This legislation is protective in nature. It is intended to increase the ERISA and LMRDA protections for the people whose day-to-day lives are controlled by union officials and whose futures are dependent on the actions and decisions of benefit plan officials.

One further important aspect of the legislation is the extension of the time of the disqualification.

LMRDA and ERISA now provide for a five year ban on the covered activities. This is a relatively short period of time, and our experiences have shown that it encourages disqualified individuals to stand by--sometimes using the LMRDA "clerical/custodial" exception if it is a union position, sometimes not--but often exerting substantial direct or indirect influence with the expectation that they will be able to assume or resume a position.

S. 1785 would double the disqualification period to ten years under both statutes. We believe that a period of ten years, or longer, would discourage such behavior and expectations.

We are aware of a case in which a union officer was convicted of embezzlement, and as a result, he was disqualified from serving in the positions which are now covered for five years, the present ban. During his period of disqualification, he was hired by the union as a chauffeur, and drove the union officers about. Upon the expiration of the disqualification, however, he was immediately appointed as an organizer for the union and was able to begin exercising great official authority. Had the ban on activities been longer, it is doubtful whether this person would have continued to serve as a chauffeur and then step right into a responsible position.

There is one aspect of the bill which we believe should be deleted. This is the provision that requires that the salary of a convicted individual be escrowed pending appeal. This will force labor organizations and plans to make double payments--one to the account for the benefit of the disqualified person and the other to the person who is actually performing the work. We believe that this is an inequity, especially in light of the fact that of 983 LMRDA criminal cases between 1960 and 1978, fewer than one percent were reversed on appeal. Although an employee benefit plan probably could not establish such an escrow account voluntarily under the present ERISA statute, we know nothing in the law which would preclude a labor organization from doing this on its own. However, we do not believe that the establishment of an escrow account should be mandated by the legislation.

I would like to discuss one other aspect of the legislation. This section provides the Secretary of Labor with the authority to detect and investigate criminal violations of ERISA and "other related Federal laws." The Congress authorized the Department to conduct criminal investigations under both LMRDA and ERISA. However, in 1960 the Department delegated much of the responsibility for these investigations under LMRDA to the Department of Justice through a Memorandum of Understanding, and the same was true under ERISA pursuant to a 1975 Memorandum.

During my appearance before the Permanent Subcommittee on Investigations I stated that it was my intention that our investigators pursue criminal violations discovered in the course of their civil investigations. That remains my policy.

However, the Administration at this time does not support additional statutory authority to augment the Department's responsibilities in this regard. We and the Department of Justice though have been charged by the Administration to review the Memoranda of Understanding to see if they could or should be modified to achieve more efficient criminal investigations under LMRDA and ERISA. We will also study the unique functions of our Inspector General's criminal investigators who support Justice's Organized Crime Task Forces. We will undertake this review immediately.

Mr. Chairman, let me reaffirm to you, this Subcommittee, the Congress, and most importantly to the American people, the Department of Labor's unwavering commitment to protect workers and benefit plan participants. We are working closely with the Department of Justice, the Internal Revenue Service, and other Federal agencies to insure that plans and unions are rid of corrupting influences. We will use every tool presently available to us to safeguard the integrity of labor organizations and benefit plans. And we would welcome the additional tools that would be given to us by legislation such as S. 1785 which will greatly enhance our ability to achieve these goals.

I want to reiterate our desire to work with you to develop stringent enforcable and enforced provisions of law which afford needed protections to all members of labor organizations and all participants and beneficiaries of employee benefit plans.

Senator NICKLES. Thank you, Solicitor. We appreciate your appearance and also Mr. McGee. I was pleased to see you join us.

We heard Senator Rudman mention the possibility of the 90 persons from the Inspector General's office being transferred to Justice. Can you bring us up to date on what is the case?

Mr. RYAN. Yes, Senator. I will be glad to discuss from my standpoint, where it is, and Bob may want to add something.

We have had discussions with high ranking officials of the Department of Justice on the placement of the IG strike force personnel. I think there are between 85 and 90 individuals now presently assigned. At present, our discussions have gotten to a point where I do not think anything is going to come of them. Basically the situation is that individuals working for the IG's office, that is paid and supervised administratively by the Inspector General, work for the different strike forces around the country. They take most of their directives from the director of the strike force in any geographical area. The only thing we have is basically a personnel function with them. We investigated with the Department of Justice the possibility of closing this employment loop, that is, direct assignments of the IG strike force personnel to the strike force. That proposal is probably not going to come to fruition because of administrative and personnel problems that exist within the Department of Labor and at the Department of Justice.

We, however, have agreed, as Secretary Donovan's statement states, to sit down with the Department of Justice to review specifically the memoranda of understanding which we have now dealing with investigatory activities with the hope that we can specifically identify the areas where we have authority and where they have authority so we can minimize the type of problems that Senators Nunn and Rudman mentioned and that Senator Hatch, I know, is very concerned about.

Senator NICKLES. I would certainly think that would be in order to communicate. We need to work together and coordinate activities. There would certainly be some concern on behalf of many Members of Congress if it would be interpreted that this transfer would be in any way, shape, or form an advocation or resolve prosecution of this type of activity.

Mr. RYAN. Senator, I can assure you, and I am sure Bob can, too, as well as Lowell Jensen, the head of the Criminal Division, our intent in reviewing this matter was to strengthen the labor racketeering enforcement activities, not to diminish those activities.

Mr. McGEE. Senator, Mr. Ryan has described the status, as I understand it now, but I think it would be helpful to put the reference to these 90 some positions or people in specific context.

Within the Office of the Inspector General, there is a separate distinct component to which the 90 people, of about whom 79 are special agents, criminal investigators, are assigned and dedicated exclusively and consistently to the Justice Department strike forces. These are permanent assignments and they differ from the special agents that handle the fraud investigations assigned to all Inspectors General. It is that relatively small group of people within the total investigative capacity of the Department that we are addressing these issues right now. The Inspector General assumed this responsibility after the passage of the Inspector General Act in October of 1978.

Mr. RYAN. Senator Nickles, if I could add to that some specific numbers.

It appeared from Senator Rudman's and Senator Nunn's testimony that, at least from their standpoint, they understood that we were discussing the movement of all investigators to the Department of Justice. That is not the case at all. It was just the individuals who were assigned directly to the strike forces. There was never any discussion about the other LMSA investigators who are in the LMSE and ERISA areas. We feel they should be in the Department of Labor. We feel they should be conducting activities on not only civil investigatory matters but also criminal.

Senator NICKLES. There is no advocation to move this away from the Labor Department certainly as far as investigating violations or corruptions in pension funds?

Mr. RYAN. No, Senator, not at all. There is some limit to the investigations that take place of pension plans through the strike force activities, but most of that investigatory activity is directly within the pension welfare benefit program. That function will stay there. There has never been any discussion about that moving.

Senator NICKLES. Earlier we heard about the Central States' investigation, and I alluded to the fact that millions of dollars have been spent with very little actual movement from the Labor Department. Senator Nunn mentioned the lack of interest in the Labor Department during the past years. I am not speaking so much of last year as I am in the past.

What have you found to be the case? Why has there been a shortage of initiative or effort to investigate and prosecute in areas such as that or waterfront corruption cases coming from the Labor Department?

Mr. RYAN. I am reluctant to armchair quarterback what took place during the last administration. I do not know why there was any reluctance, if there was.

Senator NICKLES. Let me turn that question around.

Did you find that possibly under past investigations, particularly concerning the waterfront corruption or investigations of the Teamsters Central States Fund, that the Labor Department was aggressive in investigation and proceeding with prosecution?

Mr. RYAN. I would like to separate the issues because the office that I run, the Solicitor's office, has nothing to do with the investigatory aspects of the longshore area. So I cannot speak directly to that. I can speak directly to Central States because from both a litigation and an investigatory standpoint, most of the individuals working on that matter work for me in a special litigation task force. The Central States litigation and investigation has been the subject of oversight by the Senate Permanent Subcommittee on Investigations. There is also very definitive interest on the part of Senator Hatch vis-a-vis how the Labor Department has handled Central States. Without casting any dispersions on anyone who was involved in this in the past, my own sense is that the past administration probably did not know what they had on their hands as far as Central States investigation and litigation was concerned. It is a massive piece of litigation dealing with millions and millions of documents, with opposition provided by some of the finest trial lawyers in the country, and it was a matter that did not receive the type of priority that I think it should have received.

We have attempted to change that by the direct involvement of high level political appointees, myself and other Presidential appointees. We have not left this to the career people. I can assure you today that I have direct knowledge of what is going on and every major decision that is made, I am making it, and we are coordinating those decisions with representatives of the IRS, Treasury, and Justice Department. We really do not do anything unless we all sign off. I feel that at present—although it continues to be frustrating, very frustrating because it was a massive piece of litigation—we have a pretty good hold of both the pension case and the health and welfare case and the related investigations that are involved with Central States.

Senator NICKLES. You say the Labor Department now, or your Solicitor's office, is aggressively pursuing these cases. We are not looking 3 years or 4 years from now and have to say, yes, the Labor Department has been ineffective as far as movement in prosecution of those cases?

Mr. RYAN. I would like to be able to say that there is a direct correlation between our being aggressive and things moving forward quickly. Unfortunately, there is not. We are being aggressive. Any time we have a question of whether or not there have been violations of ERISA, we move quickly to either voluntary compliance or we bring suit. As far as the timing is concerned, we unfortunately do not have control over that totally. There is a Federal district court judge in Chicago that has control over that, and there are so many lawyers involved in this case, either representing individual trustee defendants or third-party defendants, that it is difficult to project when this will move to finalization.

Senator NICKLES. You mentioned as Solicitor you do not have jurisdiction over some of the waterfront corruption cases, and I am assuming that would be under the Labor Management Services Administration.

Mr. RYAN. That is correct. Some of it is under the LMSE function. Some is also under the Inspector General's office. In fact, I know they have participated directly with the strike force in New York, with the New York State—or New York City Organized Crime Bureau in a very successful investigation involving the Fulton's Fish Market recently.

As far as the Solicitor's office is concerned though, we are not involved in any investigations. The only matters that we are involved with involving the ILA are civil cases in Savannah and in Miami.

Senator NICKLES. Mr. McGee, does the Labor Department have a handsoff policy on some of the water corruption as we had heard?

Mr. McGEE. Senator, I have to respond in the context of criminal investigations, which are associated with organized crime intrusion into the labor union or pension benefits area which is the only area that we are involved with. As Mr. Ryan said, all of the cases that are developed in this context, the thrust of the investigations, the targeting are accomplished between our special agents and the strike force attorneys. In fact, the components of this group are physically situated at the same location with the strike force.

So I would have to respond to you there is no lack of aggressiveness. The last 6 months of the last fiscal year brought 69 indictments secured by strike force prosecutors growing out of investigations, either exclusively by IG agents assigned to those strike forces or by those agents acting in concert with other Federal agencies but always under the direction of the strike force attorneys. So the bottom line there is with the dedication of this group of people who perform nothing but these investigations and do it within the framework of the Justice Department strike force. There is no lack of aggressive investigative attention to priority items.

Senator NICKLES. I might ask a couple of general questions.

As Solicitor, how many attorneys would you have working in this area, Mr. Ryan?

Mr. RYAN. In the pension area, we have presently 51 lawyers. In the LMS program, which is a decentralized program, there are 15 lawyers in Washington and then given the day-to-day requirements, the use of 250 plus lawyers in the field. However, as far as litigation is concerned, the chief responsibility under the LMRDA statute is with the Justice Department. They redelegate cases back to us as they feel the need. So under the normal situation—but for the four major metropolitan areas four SMSA's—we handle all that litigation also. But it is decentralized.

Senator NICKLES. Are you opposed to the statement of Secretary Donovan, regarding the last section of the bill which basically, in my opinion, would somewhat reauthorize you to enforce these statutes? Is that correct?

Mr. RYAN. The administration's point, Senator, is that there is no need for that provision in the statute. However, both the Department of Labor and the Department of Justice have been directed by the White House to review the memoranda of understanding to specifically set forth the type activities which the Department of Labor should and should not accomplish in the ERISA and the Labor Management Reporting and Disclosure Act areas.

Senator NICKLES. I would concur with the need to review it. How much of a backlog do you have?

Mr. RYAN. In which areas, Senator?

Senator NICKLES. As Solicitor, how much of a backlog did you inherit and how much do you have today?

Mr. RYAN. Well, we enforce 108 statutes and have 30,000 plus cases each year within the Solicitor's office. In the area that I know Senator Hatch is interested in, and we have been working with him to provide what I think is a needed oversight of the ERISA area, I can give you the case numbers in that area. I cannot give you the actual case numbers in the actual LMRDA area. In the ERISA area at present, we have 77 cases in active litigation. We have 26 matters awaiting disposition. That is where we are either trying to evaluate the prospects for voluntary compliance, decide whether to try to work out some type of settlement agreement or determine whether we should bring suit and against whom. In the last year, we have closed 163 cases. Of the 163 cases that we have closed, 66 were returned to PWBP, and PWBP initiated action to secure voluntary compliance. That is, the potential defendant that was involved could agree to settle the case on a basis which we found acceptable. I understand that 33 were referred to the Internal Revenue Service. Two were referred to the Justice Department. One was referred to the Pension Benefit Guaranty Corp. Nineteen were closed because we did not feel that there was a violation of ERISA stated in the report of investigation. Fourteen were referred back to the field for additional investigation, and 28 were closed because of a specific change in the situation, or because they were very technical type violations which we felt were not suited for litigation. In some cases the violations were actually remedied, in others the plans had been terminated, and in others we did not have active trustees that could be named as defendants. We did identify during 1981 approximately four cases, I believe maybe five—and I am still working through this now in anticipation of Senator Hatch's oversight hearings—where in specific areas the statutes of limitation may have run. I hope we do get into this in the future, Senator Hatch.

The area of determining when a statute of limitation has run, which in some cases is 3 years under ERISA, is very difficult because we have to figure out when a report of the information was first filed with the Government, and when the Department first obtained actual knowledge of the violation, either in the form of a 5500 annual report or some other information we may have received such as through administrative deposition, information delivered in response to a subpena, interrogatories and the like. I think that also when we finish our own internal investigation, which is ongoing now, we will probably find that in some of the cases where the statute of limitation ran, they ran because this program was not given the type of emphasis that I think it deserves. The prior administration did not spend the money, did not invest the time, and did not invest the personnel in the ERISA program which it deserved, and we have recently decided to change that and change that radically. We are moving immediately about 25 percent more lawyers into this program. We are also reviewing and have ongoing a pilot project in our western region in San Francisco to see if this whole program can be decentralized because my personal feeling is that every time the pension welfare benefit program gives us a case, we should have essentially no reason not to bring suit if we cannot come up with a voluntary compliance. That is the general feeling.

Obviously there is some prosecutorial discretion, but the people we have in the field doing ERISA investigations are very able and there is no reason to pick and choose cases because we are trying to make good law. This should be an enforcement program. The people out there violating ERISA should know we are not going to put up with that.

Senator Nickles. When we conduct those oversight hearings, we will actually find that your office has been more—I do not want to say aggressive—selective in trying to prosecute those cases where we have found violations of law?

Mr. Ryan. I hope so. If not, I think it would be a very uncomfortable hearing for me.

Senator Nickles. You mentioned that the Solicitor's office has jurisdiction under Landrum-Griffin. Could you shed some light on this?

Did we have that same type of philosophy concerning ERISA violations as with Landrum-Griffin violations?

Mr. Ryan. I could not really answer that question. I can only reflect back on my past activities as a labor lawyer for management and say at least my perception then was that the Department of Labor was not too interested in actively pursuing violations of LMRDA where they involved labor unions.

Senator Nickles. We heard today from Senators who also heard hours and hours of testimony, and certainly it is this subcommittee's position that we want to see a more responsive Labor Department and not one that is not interested in carrying out the law. This has really been the case. The Labor Department has a tremendous black eye and one that needs to be remedied immediately. Hopefully this hearing today, plus the amount of concern that has been expressed by the Senators involved, will get the attention of both Justice and Labor to do a more effective and a more thorough job in carrying out the work that has been put forth by the IG's office and the strike force to actually see some results from all the efforts. We can change the statute. Since we received the testimony late, we have not had a time to review it, but I assume you are in favor of increasing the 5 years to 10 years?

Mr. Ryan. At a minimum. We think 10 is acceptable as a minimum, but the bill as drafted is acceptable to us.

BEST AVAILABLE COPY

Senator NICKLES. Do you think we should have some flexibility, up to 10, or should we go 5 to 10 or a minimum of 10?

Mr. RYAN. We think a minimum of 10 is acceptable and we would be more than willing to sit down with the staff of your committee to discuss any possible modifications of that.

Senator NICKLES. Are you in favor of increasing fines for violation of payoffs for anything over $1,000 becoming a felony?

Mr. RYAN. Yes, Senator, we are. But the Justice Department will be discussing that vis-a-vis the title XVIII rewrite and I would defer to the Justice Department on that.

Senator NICKLES. The administration is in support of increasing that to 10 but not under S. 1785, but under the Criminal Code revisions?

Mr. RYAN. I will let Mr. Jensen discuss that area. It is more in his area than mine.

Senator NICKLES. Senator Hatch, do you have any questions?

Senator HATCH. You joined with the Justice Department in recommending that section 14 of the bill be deleted. This section seeks to affirm, if not reaffirm, the Department of Labor's authority and responsibility to detect and investigate criminal activity. Yet the PSI hearings clearly demonstrate that, in my opinion, the DOL, at least under the previous administration, did not believe that it had sufficient authority under ERISA to investigate information of a criminal nature.

Could you precisely identify what the nature of DOL's legal authority is today?

Mr. RYAN. Yes, Senator. We feel that the bill as drafted, which essentially ties in a catchall other related crimes, is not in the interest of the administration. We feel that the specific provisions now set forth in the United States Code provide us with the authority to investigate crimes under ERISA and under LMRDA.

As far as the Department of Labor's legal authority, we feel that our job is to primarily investigate the civil side of ERISA violations. That is not to say that we will not move forward on an aggressive basis to review and investigate criminal activity. If we find that we have an actual criminal violation or something that we feel is close to a criminal violation, so we will immediately refer that matter to the Department of Justice. The difference between this administration and the last administration is that, as I understand the statements of Secretary Marshall before PSI, we disagree with his position that we do not have authority to move aggressively forward in identifying and investigating criminal matters up to a point where we feel it should be referred to the Justice Department. We will not walk in and say, oh, that is a potential criminal violation, so we will not look at it. That is not what we are about. We have made specific changes in that area and I can assure you that there are a number of investigations which could relate to criminal violations which are ongoing right now.

Senator HATCH. Do you believe or agree that the memorandum of understanding with DOL entered into with the Justice Department by which DOL relegated or delegated its authority to the latter is in any need of revision?

Mr. RYAN. We think it is in need of review to determine what the Department of Justice's position is and what our position is.

BEST
AVAILABLE COPY

We are dealing with memoranda of understanding which are quite old, and it is important that we sit down and let everyone understand what is expected of us because it is clear, just from today's hearing, that some very influential Members of the Senate want us to be quite aggressive, that is, the Department of Labor in this area, and we are quite willing to please you in that regard.

Senator HATCH. How many pension cases involving the ILA did you find?

Mr. RYAN. I could not give you the exact number, Senator. I know that we had a pension strike force in Miami which involved the ILA. We have one going—two or three cases in Savannah which I would not characterize as corruption, but they do involve ILA. That is on the civil side.

The IG strike force people have been actively involved with the Justice Department strike force units in the criminal side.

Senator HATCH. Has the statute of limitations run on any of the ILA cases, to your knowledge?

Mr. RYAN. I could not give you a definitive answer on that.

Senator HATCH. Do you know if the statute of limitations has run on any of the Teamster cases?

Mr. RYAN. Again I could not give you an answer on that. If you want, I will get back to you on both of those matters within this week.

Senator HATCH. I would appreciate that.

Could you give us any reason why our committee was not notified with regard to the transfer of the 90 IG's? Is there any reason for that?

Mr. RYAN. Let me give two answers to that.

The first reason is that it was not at a point where we actually thought that something was going to take place. If we had gotten to a point where within the administration we had ironed out all of the numerous problems that existed or exist with that proposal, then, of course, we would have come to your committee and also to PSI. Senator Nunn mentioned that a couple of months ago a Department official contacted his counsel to talk about that item. I was the person who contacted Mr. Steinberg and talked with him about this. We, at that time, had not even decided to go over to the Justice Department and talk with them about it. In retrospect, this is probably one of those matters that we probably should sit down and talk with you about, and at least as far as I am concerned, before we do anything in this area in the future, I pledge that I will do that with you.

Senator HATCH. Thank you.

The PSI investigation was critical of the Labor Department's failure to monitor the benefits and administration account of the Teamster funds.

Is the Department still monitoring this account or is it monitoring this account?

Mr. RYAN. I did not hear the first part.

Senator HATCH. I was referring to the criticism by the Permanent Subcommittee on Investigations. The criticism was that the Labor Department failed to monitor the benefits and administration account of the Teamsters' fund. So the question is, Is the Department monitoring this account now?

Mr. RYAN. Not only the Department of Labor but also the Internal Revenue Service.

Senator HATCH. What actions has the Department of Labor taken to gain access to all appropriate Teamsters' documents?

Mr. RYAN. We have, over the last 2 years, been engaged in litigation to provide us with all of the relevant documents. From the pension case side, which is captioned *Donovan* v. *Fitzsimmons,* we have had access to almost all the documents we need, verging on 2 million.

In the other case which involves the health and welfare case which is captioned *Donovan* v. *Robbins,* we have not been as successful as we would have liked receiving documents from Amalgamated Insurance, which was the provider to the health and welfare fund. I am pleased to inform the committee though that within the last 2 weeks we have received a final decision from the Seventh Circuit Court of Appeals ordering Amalgamated Insurance and the health and welfare fund to produce all documents up until July of 1981. We are now in the process of production of all of those documents.

This, by the way, is the first time that the Government has had access to all of the documents dealing with Amalgamated Insurance.

Senator HATCH. That is great. But where precisely, to the best of your ability to define it, does the Teamsters fund inquiry by the Labor Department stand today?

Mr. RYAN. I would have to refer to the fact that we have multiple pieces of litigation going on. There are two primary cases, the pension case and the health and welfare case. We are still in discovery. We are in, I would say, more advanced discovery right now in the health and welfare case than in the pension case because the judge who is handling the case in Chicago, Judge Moran, has ordered discovery in the pension case suspended pending his determination of a proposed settlement agreement submitted by the Central States and a number of plaintiffs' lawyers in a case captioned *Douchek* v. *Sullivan.* We have moved to intervene in that case.

We have also asked the court to disapprove the settlement agreement. We expect some resolution of that issue within the near term. In fact, a hearing was set before Judge Moran on Thursday. I believe it has been delayed to next week because counsel for the Central States found themselves snowed in in different locations.

Senator HATCH. Questions were raised by PSI that Labor Department officials working on the Teamsters inquiry are still working in this area.

Are any or all of those officials still working in this area, and I am talking about the people that were mentioned in the PSI testimony?

Mr. RYAN. Yes, Senator. I am not familiar with all of the individuals that testified at PSI. As far as the individuals who were working in the Solicitor's office in the special litigation operation, we do not have at present any of the prime individuals who were working on the Central States case working on it now. We still have some individuals assigned to our office. They have been moved, however, to other sections of the Department working on details.

Senator HATCH. What kind of backlog involving the labor union and pension abuses did you find when you took over as Solicitor of Labor?

Mr. RYAN. When we came in, we had 54 cases in litigation and 185 awaiting disposition. As I said before, we now have 77 in litigation and 26 awaiting disposition.

From my own personal standpoint—and I have mentioned this to you on a number of occasions, Senator Hatch—the pension area was not given the type of enforcement or personnel really necessary to do the job. We need more people. We need to spend more time. We need for the participants in these pension and health and welfare plans to know that the Federal Government will do everything in their power to make sure that when they retire, their funds are there with a reasonable amount of investment and interest.

Senator HATCH. Just one final question.

Why have you folks down at the Labor Department kept on several people in policy areas, as I brought up with Senator Nunn, just to mention Kotch-Crino, who have been directly accused of being responsible for past abuses and failure, and the one in particular I can think of, there is an awful lot of evidence in Kotch-Crino that there is an awful lot of impropriety.

But as I view it, he is still down there in a policymaking position.

Mr. RYAN. As you know, and you mentioned in your testimony, the Kotch-Crino report has been the subject, and currently is the subject, of review by the Justice Department. And I think the question of what is happening with that review is best posed to Mr. Jensen who has the Criminal Division. As far as to my knowledge——.

Senator HATCH. You have read the report?

Mr. RYAN. Yes, Senator, I have, and I can——.

Senator HATCH. You admit that the serious allegations are serious allegations against certain employees of the Department of Labor?

Mr. RYAN. The most serious allegation, as far as I am concerned, vis-a-vis the Kotch-Crino report, is the allegation that someone had the audacity to try to destroy it.

Senator HATCH. That is serious enough. But there were other allegations of improper conduct, improper administration, improper delays, improper interference with Labor Department investigations and other investigations, what appear to be absolute overt actions that anybody in his right mind would call improper.

Mr. RYAN. I will not defend those types of activities.

Senator HATCH. But you agree those allegations are there?

Mr. RYAN. They are serious allegations.

Senator HATCH. And I described it accurately?

Mr. RYAN. With serious allegations one should conduct a serious investigation to determine if there really is any merit to those allegations. And I believe that that is ongoing at present.

Senator HATCH. But is it not true that I have described these allegations and accusations against certain individuals quite accurately without going into their names or precise allegations?

Mr. **Ryan**. That is correct. And I can assure you that any individual specifically mentioned in that report has been at least removed from any involvement with *Central States* case.

Senator **Hatch**. That is the problem. This one person is right there making policy and he has had serious allegations of interference, if not obstruction of justice.

Mr. **Ryan**. I am not aware of any individual that would be in that situation, Senator.

Senator **Hatch**. One man involving the Teamsters inquiry, for instance, was brought to the District of Columbia and was even promoted.

Mr. **Ryan**. I am not aware of that, Senator. I can assure you that that individual does not work for the Solicitor's office, and if he works for another operating entity of the Department, I am not aware of it.

Senator **Hatch**. Thank you, Mr. Chairman.

Senator **Nickles**. Thank you, Mr. Ryan. We appreciate your cooperation, also that of Secretary Donovan in providing insight and input into Senate bill 1785. We will continue to work with you and your staff to see if we cannot resolve some of the other disagreements we may or may not have on the legislation. Hopefully, we can come up with something in the not too distant future which will basically achieve what we are after.

There may be additional questions that myself or Senator Hatch may wish to ask you for the record, to tie up some of the loose ends, particularly between Labor and Justice, and also between the branches of Labor, Mr. Dotson's office and your office, in coordination, in resolving what jurisdiction should be open to which.

Mr. **Ryan**. Would you want me to wait until the Justice Department testifies?

Senator **Nickles**. I would appreciate it if you would. We are under some time constraint and we will have to move fairly rapidly. But if you would, I would appreciate it.

Thanks very much.

Our next witness will be Lowell Jensen, Assistant Attorney General of the Criminal Division.

Your entire statement will be incorporated in the record.

STATEMENT OF D. LOWELL JENSEN, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE, ACCOMPANIED BY DAVID MARGOLIS, CHIEF OF ORGANIZED CRIME AND RACKETEERING SECTION, CRIMINAL DIVISION

Mr. **Jensen**. I had undertaken an effort to do a summary but I will try to summarize even that.

On my right I have with me David Margolis, who is head of the organized crime strike force operation in the Department of Justice, and on my left is Jerry Toner, who is head of the labor unit, should there be any need for specific inquiry.

Senator **Nickles**. Mr. Margolis is what?

Mr. **Jensen**. Chief of the organized crime force operations within the Department of Justice.

So all of the strike force activities that have been alluded to already would be within his direct supervision.

I am pleased to be here today to present the views of the Department of Justice on S. 1785, a bill entitled the "Labor Racketeering Act of 1981." Because the bill affects the Federal regulation of labor-management relations and the internal operation of labor unions and of employee benefit plans and changes the current investigative jurisdiction of the U.S. Department of Labor, I shall separately discuss each of the bill's three major proposals. I note that the Justice Department's comments on S. 1785 are more fully set forth in a written statement and in a letter to you, Mr. Chairman, and that would be forwarded to the committee. I would appreciate if that statement would also be made a part of the record.

Senator NICKLES. It will.

[The letter referred to follows:]

U. S. Department of Justice
Office of Legislative Affairs

FEB 9 1982

Office of the Assistant Attorney General
Washington, D.C. 20530

FEB 09 1982

Honorable Donald Nickles
Chairman
Subcommittee on Labor
Committee on Labor and
Human Resources
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is a response to your request for the views of the Department of Justice on S.1785, a bill entitled the "Labor Management Racketeering Act of 1981."

For the reasons discussed below, the Department of Justice recommends against enactment of Section 2 of the bill which would increase the maximum penalty to five years' imprisonment and a $15,000 fine for any violation of 29 U.S.C. 186 where the amount of money or thing of value exceeds $1,000. However, because the Department of Justice supports the elevation of what is now a violation of 29 U.S.C. 186 to a felony in certain cases, the Department recommends that a "labor bribery" statute be enacted as part of Title 18, United States Code, which would impose felony penalties in cases involving a high risk of corruption in labor-management relations and which would uniformly prohibit corrupt payments in all industries now covered by the Taft-Hartley and Railway Labor Acts.

The Department of Justice recommends enactment of those provisions of the bill which would amend Sections 504 and 1111 of Title 29, United States Code, with respect to the prohibition of persons holding offices in and certain positions related to labor unions and employee benefit plans upon conviction of certain crimes. However, the Department of Justice further recommends that the bill be amended, as suggested below, with respect to the inclusion of certain crimes and positions, procedures concerning the prohibition of service by corporations and partnerships, the prohibition in 29 U.S.C. 504 on service by members of the Communist Party, the level of scienter required under 29 U.S.C. 504, and the effect of any amendment on outstanding convictions.

Finally, the Department of Justice does not support the blanket conferral on the Department of Labor, concurrently with the Federal Bureau of Investigation and other investigative agencies, of the responsibility and authority to investigate all criminal violations related to employee benefit plans, including those of offenses contained in Sections 664, 1027 and 1954 of Title 18, United Stated Code. Therefore, the Department of Justice recommends against the enactment of Sections 12, 13 and 14 of the bill.

DISCUSSION

Proposed Elevation of 29 U.S.C. 186 To a Felony in Certain Cases

Recent convictions involving labor-management corruption on the waterfront and in other industries have demonstrated the continuing need for strong federal legislation to deter the use of extortion, bribery, and payments involving conflicts of interest among the parties to collective bargaining. However, the current penalty for the substantive offense under 29 U.S.C. 186, a misdemeanor, is limited to a maximum fine of $10,000, imprisonment for not more than one year, or both. Although a violation of Section 186 also can be a predicate offense for purposes of the Racketeer Influenced and Corrupt Organizations (RICO) Act (18 U.S.C. 1961-1968), prosecution under the latter statute requires a pattern of racketeering activity, whereas Section 186 is aimed at singular criminal acts. In our view, the gravity of the penalty for an isolated payment or receipt, which may reflect a significant corruption of labor-management relations and which may or may not involve a substantial amount of money, is not always sufficient for the crime.

Therefore, the Department of Justice recommends that legislation be enacted which would impose felony sanctions on any employer or person acting in the interest of an employer who offers, gives, lends, or agrees to give or lend anything of value to a labor organization, or to an officer or agent of a labor organization for or because of the recipient's conduct in any transaction or matter concerning such labor organization. The statute would impose equivalent sanctions on anyone who solicits, demands, accepts or agrees to accept anything of value, the offering of which constitutes an offense by the employer or person acting in his interest. Legislation of this kind has been considered by the Congress in connection with proposals for a uniform criminal code. 1/

We believe that such a statute would more appropriately focus the imposition of felony sanctions on the corrupt nature of the payment in conformity with existing federal statutes which cover bribery and graft in other contexts. 2/ We further recommend that the penalty for a felony violation include imprisonment for not more than five years, a maximum fine of $15,000 or three times the monetary equivalent of the thing of value, whichever is greater, or both a fine and imprisonment, in a manner similar to the felony provisions, under 18 U.S.C. 201(a)-(e) (bribery of public officials). Because the proposed offense would in effect supplant the only provision of 29 U.S.C. 186 which requires a nexus between the payment and the recipient's office, 29 U.S.C. 186(a)(4), we further recommend that Subsection 186(a)(4) be repealed.

On the other hand, we believe that the *malum prohibitum* violations with respect to payments to and receipts by union officials in violation of Subsections 186(a)(1) and (a)(2) should continue to be treated as misdemeanors in Title 29, United States Code. Under current law, criminal liability under 29 U.S.C. 186 is not limited to situations involving bribery or extortion, but also extends to payments and receipts which might potentially affect the union official's loyalty to the employees whom he does or could represent.

1/ *See, e.g.* S.1630, 97th Cong., 1st. Sess. (1981), Section 1752 (Labor Bribery); S.1722, 96th Cong., 1st. Sess. (1979), Section 1752 (Labor Bribery); S.1437, 95th Cong. 2nd Sess. (1978), Section 1752 (Labor Bribery) as passed by the Senate.

2/ *See, e.g.*, 18 U.S.C. 1954 which imposes felony sanctions in regard to payments made in connection with matters relating to employee benefit plans; *see also* 18 U.S.C. 201 and the distinction between penalties for "bribery" and the payment of unlawful "gratuities."

The statute prohibits all knowing payments, loans, and deliveries of things of value, or agreements for the same, from an employer, or a person acting in the interest of an employer, to a labor union or union official whose status is covered by Subsections 186(a)(1) or (a)(2) regardless of whether or not the payment or receipt is made because of the union official's status and because of some corrupt purpose. 3/ Only those payments which are specifically excepted in Subsection 186(c) may lawfully be made and received.

The continuing presence in Section 186 of a general prohibition against employer payments to labor organizations and representatives of employees is necessary for purposes of the criminal and civil enforcement of restrictions in 29 U.S.C. 186(c) on an employer's withholding and payment of union members' dues, contributions to union-sponsored pension and welfare benefit trusts, etc. Moreover, because conviction for the unlawful receipt of or demand for any payment prohibited by Subsections 186(a)(1) or (a)(2), regardless of its amount, is fully consistent with conviction for conduct equivalent to bribery or extortion, 4/ the misdemeanor offense will continue to be a useful vehicle for

---

3/ *See, e.g., United States v. Ricciardi*, 357 F.2d 91, 99-100 (2nd Cir.), *cert. denied*, 384 U.S. 942 (1966), which holds that the receipt of payments motivated by personal friendship is not exempted from prosecution under subsections (a)(1) and (b)(1); *United States v. Pecora*, 484 F.2d 1289, 1294 (3rd Cir. 1973), which upheld an indictment under subsections (a)(1) and (b)(1) of a union official who received part of the proceeds from a testimonial dinner to which he knew employers had contributed despite the absence of the evidence showing the union official's solicitation of contributions, exercise of influence on behalf of the contributing employers, or other "corrupt purpose"; and *United States v. Thompson*, 466 F.2d 18 (W.D. Pa.), *aff'd without opinion*, 588 F.2d 825 (3rd Cir. 1978), where the union official's acceptance of unsolicited Christmas gifts from an employer resulted in conviction under subsections (a)(1) and (b)(1).

4/ *See, e.g., United States v. Kramer*, 355 F.2d 891, 896 (7th Cir.), *vacated in part on other grounds*, 384 U.S. 100 (1966).

plea bargaining and for prosecution where the coercive element of extortion cannot be established as a practical matter because of the employer-victim's unwillingness to admit that the unlawful payment was made under duress.

In addition to bringing labor bribery and graft into conformity with other federal statutes covering corrupt payments, a felony offense in Title 18, United States Code, has the advantage of closing the existing gap, which one court has characterized as "illogical and inequitable," 5/ between the criminal penalty for employer payments to labor representatives in the railway and airline industries and the penalty for similar payments in all industries covered by the Taft-Hartley Act. Employer payments to labor representatives in the railway and airline industries are not prohibited by 29 U.S.C. 186, but rather are prohibited by Section 2, Fourth of the Railway Labor Act (45 U.S.C. 152) which carries a maximum penalty of imprisonment for 6 months, $20,000 fine, or both. 45 U.S.C. 152, Tenth and 45 U.S.C. 181. Enactment of Section 2 of the bill and elevation of 29 U.S.C. 186 to a felony would have the effect of further widening the gap in penalties. By including the railway and airline industries within the definitional terms of a new felony offense in Title 18, the gap can be closed with respect to prohibited payments without disrupting other regulatory provisions contained in each Act. 6/

Therefore, we further recommend that the felony offense described above include the definition of the term "labor organization" used in Section 3 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 402), which

---

5/ United States v. Davidoff, 359 F. Supp. 545, 547 (E.D.N.Y. 1973), dismissing for lack of jurisdiction an indictment under 29 U.S.C. 186 which charged a union official with the receipt of payments from an airline employer.

6/ See, e.g., United States v. Winston, 558 F.2d 105 (2d Cir. 1977), a prosecution of an employer under the Railway Labor Act for the alleged willful exercise of influence and coercion of employees in matters involving employee representation, subject matter which would be an unfair labor practice in industries not covered by the Railway Labor Act. Both 29 U.S.C. 186 and the 45 U.S.C. 152 also provide for civil enforcement.

expressly includes labor unions in the railway and airline industries. We suggest that the felony offense generally follow the definitional format of S.1630, 97th Cong., 1st Sess. (1981), Section 1752 insofar as the definitional terms are relevant to the proposed felony offense. 7/

General Comment on the Amendment of 29 U.S.C. §§504 and 1111: (S.1785, Sections 3 through 11)

Because the Department of Justice believes that labor unions and employee benefit plans must be free of the control or influence of persons who pose a danger to the integrity of such organizations, as demonstrated by their conviction of significant crimes, the Department supports those portions of the bill which would strengthen Sections 504 and 1111 of Title 29, United States Code, and bring the two companion statutes closer to conformity as to the crimes and positions covered. Therefore, the Department of Justice supports those portions of the bill which would amend both Sections 1111 and 504 and 1) elevate each statute to a felony with the uniform result that violation of either statute will carry a maximum sentence of imprisonment for five years, $10,000 fine, or both (Sections 5 and 9, respectively, of the bill); 2) extend the period of prohibited service under each statute from five to ten years after conviction, or after the end of imprisonment, whichever is later (Sections 4 and 8 of the bill, respectively); and 3) impose the disability of each statute in all cases immediately upon conviction in the trial court from date of judgment, regardless of whether the judgment remains under appeal (Sections 6 and 7, and Sections 10 and 11, respectively, of the bill).

With respect to the issue of whether compensation, which might be otherwise due a convicted person, should be placed in escrow pending the outcome of any such appeal, the Department of Justice defers to the Department of Labor. We are advised that the Labor Department objects to the escrow provisions of the bill by reason of their possible conflict with existing law.

7/ S.1630, Section 1752 contains a specific definition for "labor organization" which also includes federal employee unions within its coverage.

On the other hand, although the Department of Justice supports the bill's enlargement of the list of disabling crimes in each statute to also include certain offenses involving abuse or misuse of the convicted person's labor organization or employee benefit plan position or employment, we believe that such additional crimes should not be limited to felonies (Sections 4 and 8 of the bill). We also recommend that the larger list of specifically enumerated crimes now contained in Section 1111 be added to Section 504. We comment below on what we believe should be an appropriate format for bringing the two statutes into conformity as to disqualifying crimes.

The Department also opposes enactment of particular provisions of the bill which, in its opinion, would unduly expand the scope of the statutory prohibitions at the expense of union members' control of their own organizations, the principle of union democracy which is embodied in the federal labor laws, and the rights of persons who do not occupy positions of real influence with respect to unions or employee benefit plans. We comment below on each new position added by Sections 4 and 8 of the bill.

Disqualifying Crimes

There is presently a disparity between the list of crimes in Section 504 and the larger list of crimes included in Section 1111 despite the complementary application of the two statutes in certain cases which involve union-affiliated benefit plans. An individual convicted of perjury, for example, is forbidden to administer or be employed by an employee benefit plan, but he is free to occupy a responsible position in a union which is affiliated with the same plan and to bargain with employers about the funding of that plan. This disparate result also occurs whenever a person is convicted of one of the federal statutory crimes listed in Section 1111 which does not equate to any of the generic crimes listed in Section 504. [8] This anomalous treatment results despite the fact that a union official and an employee benefit plan official both occupy fiduciary positions in their respective organizations and may sometimes owe fiduciary responsibilities to an identical class of individuals who as union members participate in benefit plans sponsored in whole or part by their union.

---

[8] For example, any conviction under 29 U.S.C. 186 covering prohibited payments from employers to union officials is a disabling offense under Section 1111. Because 29 U.S.C. 186 is not expressly enumerated in Section 504, however, disqualification under Section 504 requires that the crime be equivalent to or a predicate for one of the generic crimes listed in that statute. See, e.g., Hodgson v. Chain Service Restaurant, Luncheonette, and Soda Fountain Employees Union, Local 11, 355 F. Supp. 180 (S.D.N.Y. 1973).

Therefore we recommend that the list of specifically enumerated crimes in both statutes be identical. We believe that the larger list of crimes in Section 1111 generally reflects a more adequate basis of protection for union members equal to that which they already hold as pension and welfare benefit plan participants. Inclusion of the Section 1111 list of crimes in Section 504 would afford additional protection against potential abuse by persons convicted of the generic crimes of fraud, kidnaping, and perjury. The list of specific crimes in Section 1111 would also provide new protection under Section 504 with respect to persons convicted of the following statutory crimes:

1) those misdemeanor violations of 29 U.S.C. 186 for payments to union officals which could not otherwise be characterized as bribery;

2) those payments to benefit plan officials, union officials, employers, and service providers in violation of 18 U.S.C. 1954 which could not otherwise be characterized as bribery;

3) those deprivations of union members' rights through the threatened use of violence in violation of 29 U.S.C. 530 which could not otherwise be characterized as murder, assault with intent to kill, or assault which inflicts grievous bodily injury;

4) those mail and wire fraud schemes in violation of Title 18, United States Code, Chapter 63 which could not otherwise be characterized as grand larceny or embezzlement;

5) the falsification of records and reports required by Title I of the Employee Retirement Income Security Act of 1974 (hereafter referred to as "ERISA") (18 U.S.C. 1027);

6) the misdemeanor for coercive interference with plan participants' rights under ERISA (29 U.S.C. 1141);

7) the reporting and record keeping misdemeanors under ERISA (29 U.S.C. 1131);

8) the misdemeanors under the Labor Management Reporting and Disclosure Act of 1959 (hereafter referred to as "LMRDA") which relate to the bonding of union officials (29 U.S.C. 502), prohibited loans from unions (29 U.S.C. 503(a)), and payments of criminal fines by unions and employers (29 U.S.C. 503(b));

9) those felony violations relating to all controlled drug substances described in Title 21, United States Code, which could not otherwise be characterized as violations of "narcotic laws";

10) any crime described in 15 U.S.C. 80a-9(a)(1) relating to the Investment Company Act of 1940, as amended;

11) a violation 18 U.S.C. 874 relating to kickbacks on federally financed public works;

12) obstruction of justice in violation of 18 U.S.C. §§1503, 1505, 1506 and 1510;

13) a conviction under 29 U.S.C. 504 or 29 U.S.C. 1111; and

14) conviction for any attempt to commit the specifically enumerated crimes.

Accordingly, the Department of Justice recommends that Section 8 of the bill be amended to prohibit service under Section 504 by reason of conviction for all the crimes currently listed in Section 1111 which are not listed in Section 504.

Although we support the bill's prohibition against service by convicted felons if their crime involved the abuse or misuse of labor organization or benefit plan position or employment, we believe that conviction for crimes involving an abuse of such positions generally carries a grave risk to the integrity of unions and benefit plans regardless of whether the particular crime was punished as a felony or misdemeanor. Persons convicted of misdemeanors under federal and state law are currently disqualified by reason of the generic nature of the crimes now listed in both statutes 9/ and without regard to union or benefit plan affiliation. 10/ Therefore we believe that any new class of convictions which directly focuses on an abuse of union or benefit plan position should continue to include misdemeanor and felony convictions in a manner consistent with treatment given specific crimes listed in both statutes. We see no reason why a person who commits any crime specifically involving an abuse of his union or benefit plan position should be regarded as less of a potential threat to the integrity of his organization than the person who has been convicted of a specifically enumerated felony or misdemeanor which in no way involved his union or benefit plan employment. Accordingly, we recommend that Sections 4 and 8 of the bill be amended further to provide for disqualification under both Sections 504 and 1111 by reason of conviction for "any crime involving the abuse or misuse of such person's labor organization or employee benefit plan position or employment; or conspiracy to commit such crimes; or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element . . .."

Enlargement of the Class of Persons Prohibited from Service

Although we support the concept of bringing Sections 504 and 1111 into conformity with respect to positions which have substantially equivalent responsibilities, we believe that labor organizations and employee benefit plans should continue to be treated independently in view of the separate definition of certain positions and terms by the Labor Management Reporting and Disclosure Act (LMRDA) and the Employee Retirement Income Security Act (ERISA), respectively. Indeed, the bill does not purport to consolidate the two statutes. Therefore, we suggest that all treatment of positions in labor organizations be

---

9/ United States v. Priore, 236 F. Supp. 542 (E.D.N.Y. 1964)(state misdemeanor for conspiracy involving extortion results in disqualification under Section 504).

10/ See, e.g., Lippi v. Thomas, 298 F. Supp 242, 248 (M.D.Pa. 1969) (bank larceny under 18 U.S.C. 656 which did not involve union conduct results in bar from union position); Viverito v. Levi, 395 F. Supp. 47 (N.D.Ill. 1975)(embezzlement from a federal savings and loan association results in a bar from benefit plan position).

eliminated from Subsections 4(a)(1) through 4(a)(6) of the bill which amend 29 U.S.C. 1111. This would require omission of references to "any labor organization" in Subsections 4(a)(2), (5), and (6) in addition to deletion of Subsections 4(a)(3) and (a)(4). Similarly, we suggest that all treatment of positions in employee benefit plans be eliminated from Subsections 8(a)(1) through 8(a)(6) of the bill which amend 29 U.S.C. 504. This would require omission of references to "any employee benefit plan" in Subsections 8(a)(2), (5) and (6) in addition to deletion of Subsection 8(a)(1).

Because the disqualification of service in regard to employee benefit plans would be confined to Section 1111 under the format which we recommend above, there would clearly be no need to recite the list of benefit plan-related positions in Section 3 as well as in Section 4 of the bill. That is, there would be no need to separately describe the class of persons holding employee benefit plan positions apart from the class of persons holding union positions under our suggested format for purposes of an amendment of Section 1111. Moreover, we note that the recitation of benefit plan-related positions in Section 3 of the bill is not coextensive with the list of benefit plan-related positions in Section 4. Section 3 only recites the positions listed in Subsections 4(a)(1) and (a)(2) and omits the benefit plan-related postions specified in Subsections 4(a)(5) and (a)(6).

In any event, we oppose the enactment of Section 3 of the bill inasmuch as it may give rise to the argument that a convicted person who is barred from service in the positions listed in Section 4 must have been a benefit plan administrator, etc., prior to or at the time of his conviction or imprisonment. That is, Section 3 of the bill would amend Section 1111(a) to read "No person who is an administrator [etc.] who has been convicted of, or has been imprisoned as a result of his conviction of [the enumerated crimes] shall serve or be permitted to serve (1) as an administrator [etc.] . . . ." Because the Section 1111 disability currently applies, and will continue to apply under the format of the bill, to certain specifically listed crimes which have no connection to benefit plan employment, any such interpretation of the statute, as amended, would be contrary to the remedial purposes of Section 1111 as originally enacted and a significant retreat from current law. Section 1111 currently states unequivocably that "no person" who has been convicted of certain crimes shall serve in certain benefit plan-related positions. 11/ In our view, any person who has been convicted of bank embezzlement, for example, and who has not persuaded the United States Parole Commission that his service would be in accord with the purposes of ERISA Title I should be barred for the statutory period from later entering a benefit plan-related position regardless of whether he has ever held such a position before. Therefore, we recommend against enactment of Section 3 of the bill.

Representative of an Employee Benefit Plan: Section 4(a)(1)

We endorse the bill's inclusion of the term "any representative in any capacity" with respect to disqualified service with employee benefit plans. Although the current list of positions in 29 U.S.C. 1111(a)(1) includes the term "agent," this amendment should clarify the statute's broad application to any person who deals on behalf of the plan even without express authority or compensation.

Consultant to a Labor Organization: Sections 8(a)(2), 10(c)(2)

We support the inclusion within 29 U.S.C. 504 of the term "consultant," which currently applies to compensated service providers of employee benefit plans under 29 U.S.C. 1111(c)(2). Because of the fiduciary responsibilities imposed on union officers and employees by the LMRDA, we think that it is reasonable for a union official, just as it is reasonable for an employee benefit plan fiduciary currently, to exercise care in selecting the persons who will advise, represent, or otherwise provide assistance to the union concerning its establishment or operation when he knows that the individual or entity will be compensated, directly or indirectly, from union funds. The bill imposes a penalty on persons who knowingly employ or retain a convicted individual or entity.

11/ The legislative history of ERISA speaks of the provision as barring "all persons convicted of certain listed criminal offenses." H. Rep. No. 93-533 on H. R. 2, 93d Cong., 1st Sess. 11 (1973).

We suggest that any reference to a "labor organization" in the definition of consultant be omitted in Section 6(c)(2) of the bill and that any reference to any "employee benefit plan" be omitted from Section 10(c)(2) of the bill.

Adviser to any Labor Organization or Employee Benefit Plan: Sections 4(a)(2) and 8(a)(2)

Because the term "adviser" is listed separately from the term "consultant," we infer that one may be prohibited from being an adviser on any subject matter to a benefit plan or labor union regardless of any arrangement with respect to compensation for services rendered. Because of their special expertise, insurance consultants and financial advisers, for example, have considerable influence on employee benefit plans and their affiliated labor organizations regardless of the source of their compensation. Therefore, the Department of Justice supports the inclusion of the term "adviser" in 29 U.S.C. §§504 and 1111.

Employee or Representative of Any Labor Organization: Section 8(a)(3)

We strongly endorse the bill's elimination of the exception for exclusively clerical and custodial employees which is currently found in 29 U.S.C. 504. Frequently, the clerical exception is used as a vehicle for the rehiring, some times with substantial salaries, of convicted individuals who have vacated union office, but who continue to exercise the influence and control formerly enjoyed by virtue of the vacated office. 12/ Because a union official

---

12/ See e.g., United States v. Ronald Scaccia, 74 Cr. 136 (N.D. N.Y., order filed Nov. 5, 1980), where the district court revoked the defendant's probation, following his conviction for embezzlement of employee benefit plan monies, on a finding that the defendant had violated the terms of his probation by exercising the powers which he formerly held as business manager of his union, while purportedly serving as a union clerk, and thereby violating Section 504. The defendant was later convicted of racketeering conspiracy, the receipt of unlawful payments from employers, embezzlement of union funds, and obstruction of justice in connection with his activities as a union clerk. The latter conviction is currently pending appeal.

who uses his position corruptly may often wield great economic power over his fellow members and the employers with whom his union deals, it is sometimes difficult to prove that a convicted individual is in fact exercising more than exclusively clerical duties.

Similarly, the Department of Justice strongly supports the added coverage of persons who serve as a "representative in any capacity" of a labor organization. For example, although shop stewards are clearly defined as representatives of labor organizations (29 U.S.C. 402(q)), hold positions of trust in relation to the union and its members (29 U.S.C. 501(a)), and must be bonded when handling union funds (29 U.S.C. 502), frequently they are not characterized as officers by their union constitutions, do not sit on executive boards or otherwise function as officers and may be compensated for their union work by their regular shop employers. Therefore, it is sometimes difficult to successfully characterize a convicted shop steward as an officer or employee for purposes of Section 504 despite his significant responsibilities under the LMRDA as the union's representative who is closest to the working union member.

Labor Relations Consultant or Adviser; Employee of Employer Associations: Section 8(a)(4)

Subsection 8(a)(4) substantially restates the existing prohibition covering labor relations consultants in 29 U.S.C. 504(a)(2). However, because the term "adviser" is listed separately from "labor relations consultant," the bill appears to cover uncompensated advisers to labor unions and employers. Compare 29 U.S.C. 402(m) (definition of labor relations consultant). Because we support the bill's disqualification of uncompensated advisers to labor unions in Subsection 8(a)(2), we similarly endorse the bill's equivalent treatment of advisers to employers in this Subsection. We also support the elimination of the clerical or custodial exception in 29 U.S.C. 504(a)(2) with respect to employees of employer associations.

Shareholder, Officer, Executive or Administrative Employee of Any Entity Devoted In Whole or Part to Providing Goods and Services to Any Employee Benefit Plan or Labor Organization: Sections 4(a)(5) and 8(a)(5)

Entities and individuals who provide goods and services to benefit plans and labor unions for compensation appear to be covered by the bill under the broad definition of "consultant," which includes any person "who provides other assistance to such [labor] organization or plan, concerning the establishment or operation of such [labor] organization or plan" (Sections 6(c)(2) and 10(c)(2) of the bill). Insofar as each shareholder of service provider entities may not be personally engaged in the provision of such goods and services or be charged with the responsibility for their provision, we oppose enactment of these particular subsections of the bill in their present form as unduly broad. On their face, these subsections would disqualify any shareholder of an insurance company, for example, which issues policies or provides other administrative services to labor unions or benefit plans despite the absence of any personal responsibility on the part of such shareholder in connection with such labor union or benefit plan-related business.

Accordingly, we suggest that the committee may wish to consider a formula which would limit disqualification to shareholders whose interest is sufficiently great that the exercise of their influence would substantially affect the operations of the provider entity. For example, the Committee may wish to consider the application of a formula similar to that which determines status as a "party in interest" under Title I of ERISA, namely, persons holding at least ten (10) percent of the shares in a corporation or ten (10) percent of the capital and profits in a partnership or joint venture which provides services to benefit plans. See 29 U.S.C. 1002(14)(B), (H), and (I).

Any Capacity that Involves Decision Making Authority or Custody or Control of the Moneys, Funds, Assets, or Property of Any Labor Organization or Employee Benefit Plan: Sections 4(a)(6) and 8(a)(6).

Although the exercise of control over labor union and benefit plan property is generally limited to those positions already covered by 29 U.S.C. §§504 and 1111, together with the organizations' consultants, advisers, and representatives, we support the enactment of these subsections insofar as they operate to deter the *de facto* exercise of such control by convicted persons who otherwise do not hold the *de jure* status of those positions. 13/ However, the general members of a labor organization are entitled to exercise decision making authority, at least indirectly, with respect to the moneys, funds, assets and property of labor organizations. We do not think that the benefits which flow to a convicted individual by reason of his affiliation with a union purely as a result of membership ordinarily present so clear a danger to the integrity of the organization that the individual should be denied the opportunity to affiliate with other employees who have won the right to bargain collectively with their employer. Therefore, we recommend that the Committee consider the inclusion of language which would exclude the operation of these subsections as to any person whose decision making authority is limited solely to the exercise of rights which he enjoys as a member of a labor organization under the Labor Management Reporting and Disclosure Act.

13/ *See e.g.*, *Labor Union Insurance Activities of Joseph Hauser and His Associates: Report of the Senate Committee on Governmental Affairs by its Permanent Subcommittee on Investigations*, S. Rep. No. 96-426, 96th Cong., 1st Sess. (1979) 44-51, 52-53, and the discussion of the influence over certain benefit plans held by persons who might not currently be considered as fiduciaries or parties-in-interest in all cases under ERISA.

Service Connected With a Labor Organization, Association of Employeers or Labor Relations Consultant By Member of the Communist Party: 29 U.S.C. 504 (a)

The Department of Justice recommends that the prohibition against service by a member of the Communist Party be repealed in 29 U.S.C. 504 in view of the Supreme Court's decision in United States v. Brown, 381 U.S. 437 (1965) which struck down this particular provision as an unconstitutional bill of attainder.

Disqualification of Corporations and Partnerships

Recent prosecutions of widespread corruption on the waterfront and in other industries have demonstrated that convicted individuals may continue to hold union or benefit plan office for several months or years while their convictions are pending appeal. Therefore, we support the bill's disqualification of convicted individuals immediately upon their conviction in the trial courts. In the case of convicted partnerships and corporations, however, disqualification also adversely affects innocent third parties such as fellow employees, stockholders, etc. Therefore, we recommend that the procedures which are currently in force in 29 U.S.C. 1111(a) be retained by Section 4 of the bill and added to 29 U.S.C. 504 as part of Section 8. Currently, corporations and partnerships may not be disqualified unless the United States Parole Commission determines after notice and opportunity for hearing, that service to a benefit plan would be inconsistent with the intention of 29 U.S.C. 1111. 14/

Intentional Violation: Section 9

Because of the remedial purposes for which both Sections 504 and 1111 were enacted, the Department of Justice further recommends that 29 U.S.C. 504 be amended to insure that the element of mental culpability conform to

---

14/ See, Presser v. Brennan, et al., 389 F. Supp. 808, 814-15 (N. D. Ohio 1975), for a discussion of the ERISA statute's treatment of corporations and partnerships as distinguished from individuals.

that already found in 29 U.S.C. 1111. We suggest that the word "willfully" in Section 9 of the bill be changed to read "intentionally" thereby obviating any scienter requirement predicated on an intent to disobey or disregard the law.

Effect of the Proposed Amendments on Prior Convictions: Sections 6(c)(1) and 10(c)(1)

In order to ensure the immediate effect of this legislation on all outstanding convictions at the time of its passage, the Department of Justice recommends that Sections 6(c)(1) and 10(c)(1) of the bill include a clause similar to that currently found in 29 U.S.C. 504(c) namely that a "person shall be deemed to have been 'convicted' and under the disability of 'conviction' . . . regardless of whether such conviction occurred before or after the date this section or any amendment thereto was enacted." 15/

Proposed Authority of the Secretary of Labor to Investigate Violations of Title 18, United States Code

Sections 12, 13 and 14 of the bill essentially impose on the Department of Labor the responsibility and authority to detect and investigate all criminal violations involving employee pension and welfare benefit plans. By its broad reference to "the provisions of this subchapter (Title I of ERISA) and other related Federal laws," Section 14 of the bill purports to extend the Department of Labor's investigative authority, concurrently with other federal investigative agencies, to violations of Sections 664, 1027, and 1954 of Title 18, United States Code, which relate to theft, false statements, and unlawful payments involving employee benefit plans, and, conceivably, to violations of other crimes of general applicability, as for example, mail fraud (18 U.S.C. 1341) involving employee benefit plans. Because we believe that current arrangements governing the division of investigative responsibilities are appropriate in view of the civil investigative responsibilities already imposed on the Department of Labor, we recommend against enactment of Sections 12, 13, and 14.

15/ See, Postma v. International Brotherhood of Teamsters, Local 294, 337 F.2d 609 (2d Cir. 1964) and Presser v. Brennan, 389 F. Supp. 808, 814 (N. D. Ohio 1975), which upheld the application of Sections 504 and 1111, respectively, to convictions occurring prior to the statutes' enactment.

Under existing arrangements, the Department of Labor is primarily responsible for the investigation of criminal conduct involving a willful violation of the reporting and disclosure provisions relating to employee benefit plans under Title I of ERISA (29 U.S.C. 1131). Pursuant to a memorandum of understanding promulgated by the Departments of Justice and Labor in February 1975, the Federal Bureau of Investigation has been delegated primary investigative authority over crimes involving disqualification from employee benefit plan employment (29 U.S.C. 1111) and interference with the rights of employee benefit plan participants and benficiaries by fraud or coercion (29 U.S.C. 1141). Because Title I of ERISA only amended Sections 664, 1027, and 1954 of Title 18 with respect to those statutes' jurisdictional predicate, namely employee benefit plans subject to Title I of ERISA after January 1975, the Federal Bureau of Investigation retained its existing primary authority to investigate violations of those statutes. See 28 U.S.C. 533; 28 C.F.R. § 0.85.

The memorandum of understanding expressly provides, however, that the above division of investigative responsibilities is subject to specific arrangements agreed upon by the two Departments on a case-by-case basis. Accordingly, current guidelines for United States Attorneys' offices provide that where a Labor Department investigation of reporting offenses discloses a theft of employee benefit assets in violation of 18 U.S.C. 664, the United States Attorney may, at his option, authorize Department of Labor investigators to complete the theft investigation in order to minimize unnecessary expense and duplication of investigative efforts. Moreover, current arrangements with the Department of Labor's Office of the Inspector General permit a wide range of criminal investigative assignments to agents of that office who are detailed to the Justice Department's Organized Crime and Racketeering Strike Forces.

Furthermore, we recognize that the Department of Labor has significant responsibilities with respect to the civil enforcement of those provisions relating to fiduciary violations and prohibited transactions under Title I of ERISA. Because of the limited statute of limitations governing civil actions, a civil investigation frequently must be conducted simultaneously with the investigation of overlapping Title 18 offenses. Although the criminal and civil investigations may proceed in parallel, a civil investigator who assists in the criminal investigation may lose his ability to effectively assist in the civil action because of restrictions on the dissemination of information gained by access to grand jury proceedings. Therefore, the imposition of broad criminal investigative responsibilities on the

Department of Labor with respect to employee benefit plans may very well require the creation of a component of criminal investigators separate and apart from its civil investigators. Yet, the expertise of the civil investigator who is repeatedly exposed to complex cases involving benefit plans is frequently the precise qualification that the criminal prosecutor seeks.

The Federal Bureau of Investigation is strongly committed to its investigative program concerning employee benefit plans and has developed substantial expertise in this area with the result of significant prosecutions and convictions in both its white collar and organized crime programs. We believe that the Department of Labor is committed to the prompt referral to the Department of Justice of evidence, developed during the course of its civil investigations, which may warrant criminal prosecution. Therefore, we recommend that 29 U.S.C. 1136 not be amended at this time.

However, the prompt referral of criminal matters disclosed during the course of civil investigations and the vigorous discharge of those criminal enforcement responsibilities which are currently held by various components of the Department of Labor are matters of continuing interest and concern to the Department of Justice. Therefore, we are gratified to know that the Secretary of Labor has formed a task force to study methods of giving greater priority to the enforcement of the criminal laws governing unions and employee benefit plans generally and to improve procedures whereby information is exchanged between the component agencies of the Labor Department and the Organized Crime and Racketeering Program of the Inspector General's Office in particular.

The Office of Management and Budget has advised this Department that there is no objection to submission of this report from the standpoint of the Administration's program.

Sincerely,

Robert A. McConnell

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

Mr. **Jensen**. Recent convictions involving labor-management corruption on the waterfront and in other industries have demonstrated the continuing need for strong Federal legislation to deter the use of extortion, bribery, and payments involving conflicts of interest among the parties to collective bargaining. Most cases of outright extortion on the parties to collective bargaining may currently result in the imposition of felony sanctions under the Hobbs Act (18 U.S.C. 1951). However, the current penalty for a substantive offense under section 302 of the Taft-Hartley Act (29 U.S.C. 186), which is the only Federal criminal statute which expressly outlaws bribery and the payment of graft to labor union officials, is limited to a misdemeanor. Although a violation of section 186 also can be a predicate offense for purposes of the Racketeer Influenced and Corrupt Organization (RICO) statute, prosecution under the latter statute requires a pattern of racketeering activity, whereas section 186 is aimed at singular criminal acts. In our view, the gravity of the penalty for an isolated payment or receipt, which may reflect a significant corruption of labor-management relations and which may or may not involve a substantial amount of money, is not always sufficient for the crime under present law. We believe that the highest risk is demonstrated where the payment is specifically directed at affecting the recipient's conduct as an official of his union or as a representative of employees regardless of the total value of any consideration paid.

Therefore, the Justice Department proposes that the committee consider the enactment of a labor bribery statute similar to that which is being considered by the Congress in connection with proposals for a uniform Federal criminal code. The current proposal in S. 1630 would substitute a new felony in title 18 of the United States Code for the particular portion of the Taft-Hartley Act which specifically requires a nexus between the payment and the recipient's office, 29 U.S.C. 186(a)(4). We believe that such a statute would more appropriately focus felony sanctions on the corrupt nature of the payment in conformity with the penalty format of existing Federal statutes which cover bribery and graft in other contexts.

Moreover, the statutory format which we propose would leave intact the general prohibitions against employer payments to labor organizations and representatives found in section 186 whose continuing operation is necessary for purposes of the criminal and civil enforcement of restrictions on an employer's payment of contributions to union sponsored pension and welfare trusts, et cetera. I understand that Lane Kirkland, president of the AFL–CIO, has articulated his concern in a hearinq before the Senate Permanent Subcommittee on Investigations that section 2 of this bill, as it is presently structured, would create confusion as to whether the latter kinds of proscribed payments, which do not ordinarily involve employer payoffs to union officers, could be punished as felonies. We believe that the statutory format which we propose would allay those kinds of concern and make clear that a felony sanction is appropriate only in cases clearly involving corruption of labor-management relations.

Let me digress for just a moment from the prepared remarks, Mr. Chairman, and respond to a concern that you expressed, and that is that our position is that we agree with the, in effect, raising of the sanction to the felony level. We think that it could be even stronger and our effort is to make it stronger by using the concept presently in the Criminal Code. If the concern you expressed, however, was that it may be deferred into a larger bill and it may be lost, that is not our purpose. Our purpose is to use that concept within 1785. Our suggestion is not that the restructuring of the bill and the raising of the misdemeanor to felony should be deferred at all. We think that the concepts we are expressing, that are articulated in the Criminal Code, are actually stronger and more consistent, and you should be looking at using those concepts in S. 1785. We do not think it would be deferred to the Criminal Code.

Senator NICKLES. I appreciate your explaining that.

Mr. JENSEN. It makes a difference.

Senator NICKLES. Plus we are getting ready to take up the Criminal Code and it is a massive piece of legislation.

Mr. JENSEN. That is absolutely correct. We do not wish to defer this in any way. We think this is an important piece of legislation. We agree with these concepts. We are offering our observations.

Senator NICKLES. Is the bill you alluded to S. 1630?

Mr. JENSEN. Yes. That is the Criminal Code. Within the Criminal Code are the definitions of a labor bribery statute that we think should be used in S. 1785.

Senator NICKLES. Is that presently in the Criminal Code bill that is before the Senate?

Mr. JENSEN. Yes, it is.

Because the Department of Justice believes that labor unions and employee benefit plans must be free of the control or influence of persons who pose a danger to the integrity of such organizations, as demonstrated by their conviction of significant crimes, the Department supports those portions of the bill which would strengthen sections 504 and 1111 of title 29, United States Code, and bring the two companion statutes closer to conformity as to the crimes and positions covered. Therefore, the Department of Justice supports those portions of the bill which would: One, elevate each statute to a felony; two, extend the period of prohibited service under each statute from 5 to 10 years after conviction, or after the end of imprisonment, whichever is later; and three, impose the disability of each statute in all cases immediately upon conviction in the trial court from date of judgment, regardless of whether the judgment remains under appeal.

Senator NICKLES. I caught the first and last. Would you repeat the second part?

Mr. JENSEN. We agree with the extension from 5 to 10 years.

Senator NICKLES. With a mandatory 10?

Mr. JENSEN. That is correct. We agree with the elevation of the statute to a felony, and we agree that the impact should take place upon conviction and judgment rather than waiting for the period of appeal.

Although the Department of Justice supports the bill's enlargement of the list of disabling crimes in each statute to also include certain offenses involving abuse or misuse of the convicted person's labor organization or employee benefit plan position or employment, we believe that such additional crimes should not be limited to felonies. Persons convicted of misdemeanors under Federal and State law are currently disqualified by reason of the generic nature of the crimes now listed in both statutes and without regard to union or benefit plan affiliation. We see no reason why a person who commits any crime specifically involving an abuse of his union or benefit plan position should be regarded as less of a potential threat to the integrity of his organization than the person who has been convicted of a specifically enumerated misdemeanor which in no way involved his union or benefit plan employment.

We also recommend that the larger list of specifically enumerated crimes now contained in section 1111 be added to section 504. There is presently a disparity between the list of crimes in section 504 which is applicable to labor unions and employer associations and the larger list of crimes included in section 1111 with respect to employee benefit plans, despite the complementary application of the two statutes in certain cases. Anomalous treatment results despite the fact that a union official and an employee benefit plan official both occupy fiduciary positions in their respective organizations and may sometimes owe fiduciary responsibilities to an identical class of individuals who as union members participate in benefit plans sponsored in whole or part by their union.

Therefore we recommend that the list of specifically enumerated crimes in both statutes be identical. We believe that the larger list of crimes in section 1111 generally reflects a more adequate basis of protection for union members equal to that which they already hold as pension and welfare benefit plan participants. Inclusion of section 1111's list of crimes in section 504 would afford additional protection to union members against potential abuse by persons convicted of the generic crimes of fraud, kidnapping, and perjury, as well as 14 categories of statutory crimes which we have set out in our written comment on the bill.

We support the concept of bringing sections 504 and 1111 into conformity with respect to positions which have substantially equivalent responsibilities. However, I would direct the committee to our written comment on section 3 of the bill which, in our view, may give rise to the argument that a convicted person who is barred from service in the positions listed in section 4 must have already been a benefit plan office holder, prior to or at the time of his conviction or imprisonment. Section 1111 currently states unequivocably that "no person" who has been convicted of certain crimes shall serve in certain benefit plan-related positions. In our view, any person who has been convicted of bank embezzlement, for example, and who has not persuaded the U.S. Parole Commission that his service would be in accord with the purposes of ERISA title I, should be barred for the statutory period from later entering a benefit plan-related position regardless of whether he has ever held such a position before. Therefore, we recommend against enactment of section 3 of the bill.

Sections 12, 13, and 14 of the bill essentially impose on the Department of Labor the responsibility and authority to detect and investigate all criminal violations involving employee pension and welfare benefit plans. By its broad reference to "the provisions of this subchapter (title I of ERISA) and other related Federal laws," section 14 of the bill purports to extend the Department of Labor's investigative authority, concurrently with other Federal investigative agencies, to violations of sections 664, 1027, and 1954 of title 18, United States Code, which relate to theft, false statements, and unlawful payments involving employee benefit plans, and, conceivably, to violations of other crimes of general applicability as, for example, mail fraud (18 U.S.C. 1341) involving employee benefit plans.

Under existing arrangements, the Department of Labor is primarily responsible for the investigation of criminal disclosure provisions relating to employee benefit plans under title I of ERISA (29 U.S.C. 1131). Pursuant to a memorandum of understanding promulgated by the Departments of Justice and Labor in February 1975, the FBI has been delegated primary investigative authority over two other misdemeanors in ERISA relating to employee benefit plans. Because title I of ERISA only amended sections 664, 1027 and 1954 of title 18 with respect to those statutes' jurisdictional predicate, namely employee benefit plans subject to title I of ERISA after January 1975, the FBI retained its existing primary authority to investigate violations of those statutes.

The memorandum of understanding expressly provides, however, that the above division of investigative responsibilities is subject to specific arrangements agreed upon by the two Departments on a case-by-case basis. Accordingly, current guidelines for U.S. attorneys' offices provide that where a Labor Department investigation of reporting offenses discloses a theft of employee benefit assets in violation of of 18 U.S.C. 664, the U.S. attorney may, at his option, request Department of Labor investigators to complete the theft investigation in order to minimize unnecessary expense and duplication of investigative efforts. Moreover, current arrangements with the Department of Labor's Office of the Inspector General permit a wide range of criminal investigative assignments to agents of that office who are detailed to the Justice Department's Organized Crime and Racketeering Strike Force.

We recognize that the Department of Labor has significant responsibilities with respect to the civil enforcement of those provisions relating to fiduciary violations and prohibited transactions under title I of ERISA. Because of the limited statute of limitations governing civil actions, a civil investigation frequently must be conducted simultaneously with the investigation of overlapping title 18 offenses. Although the criminal and civil investigations may proceed in parallel, a civil investigator who assists in the criminal investigation may lose his ability to effectively assist in the civil action because of restrictions on the dissemination of information gained by access to grand jury proceedings. Therefore, the imposition of broad criminal investigative responsibilities on the Department of Labor with respect to employee benefit plans may very well require the creation of a component of criminal investigators separate and apart from its civil investigators. Yet, the expertise of the civil investigator who is repeatedly exposed to complex cases involving benefit plans is frequently the precise qualification that the criminal prosecutor seeks.

Finally, let me say that the Federal Bureau of Investigation is strongly committed to its investigative program concerning employee benefit plans and has developed substantial expertise in this area with the result of significant prosecutions and convictions in both its white collar and organized crime programs. We believe that the Department of Labor is committed to the prompt referral to the Department of Justice of evidence, developed during the course of its civil investigations, which may warrant criminal prosecution. Therefore, we recommend that 29 U.S.C. 1136 not be amended at this time. However, we are willing to review the current memorandum of understanding regarding the allocation of investigative responsibilities between our two Departments in this area. If we conclude that changes in the existing division of responsibilities are required by way of legislation, we will advise the Congress of the need for appropriate legislative measures.

In summary, for the reasons which I have discussed, the Department of Justice recommends that S. 1785 be enacted with the changes and amendments which we have suggested. It is the Department's view that the bill and the proposed revisions which we have proposed will have the effect of strengthening the Federal Government's ability to protect the parties to collective bargaining, labor union members, and employee benefit plan participants from corrupt elements while at the same time maintaining an appropriate balance and division of responsibilities among the agencies which are charged with enforcement of the Federal laws affecting those groups.

Let me make a final comment upon this issue of division of responsibilities. I have tried to address that in a very specific fashion as to why we have taken the position that a need for a statutory change in the area of enforcement responsibility is not necessary. I hope I also make it clear that we are not attempting to abolish any kind of investigative activities. We are not attempting to take over any kind of investigative responsibilities of the Department of Labor. We do not want to take over ERISA.

Senator NICKLES. I do not blame you for that.

Mr. JENSEN. What we are addressing, however, is basically the same thing as the thrust of the legislation. However, our point is that we recognize that there is an absolute need for an effective mix of investigative resources. Under the current memorandum of understanding, that mix, we think, is fairly defined and it is subject to the control of the Strike Force attorneys where it precisely ought to be, and investigative responsibility can be assigned on that basis so that we have no quarrel at all with the thrust of the legislation in the sense that it responds to the need for close cooperation and control of investigations. What we are saying is that we think the legislation could interfere with that. It could create situations in terms of the interpretation of the memorandums of understanding and the authority for investigations that would create conflicts rather than resolve them. So we agree with the thrust. We think that it can best be addressed under the current kind of commitment that exists in the Department of Justice and the Department of Labor to share investigative responsibilities and to direct those investigations in the most appropriate fashion. We think that is what is expressed now in the memorandum of understanding. We recognize there always has to be review. That is precisely what we will undertake.

What we are saying is the current definition of responsibilities and the way it is managed by the memorandum of understanding and by the Strike Force participation in that, gives us the best possible world for investigative and prosecutive results. I hope I am making it clear. We do not intend to diminish or lessen the commitment or resources for investigation and prosecution in this area. On the contrary. We have in place priorities with the Organized Crime Strike Force and with the FBI investigators that labor racketeering is clearly a priority for their efforts, and that remains in place and that remains our commitment.

What I am trying to do in terms of responding to the sentiments expressed here this morning is we share the thrust. We think we are saying it is best addressed not by attempts to amend the legislation but keeping close watch on the memorandum of understanding.

Separate from that, I would make a quick comment on the subject that Mr. Ryan spoke to, and that is the discussions about the possible shift of resources in organized crime investigations. As I pointed out, and I would second everything said, those were preliminary kinds of discussions. They were directed at very specific investigative resources that now exist in the Department of Labor, and that is the 90 agents. It is an investigative kind of assignment to the Strike Forces within the Office of Inspector General. The only contemplation is it may be the better part of wisdom in terms of centralizing and focusing their attention to make that part of the FBI within the Department rather than two separate identities or, as Mr. Ryan said, we close the employment loop and make it direct supervision. Our purpose in looking at that under any circumstance was to strengthen the activities of the Strike Force and the investigators that work with them in this area. The word "abolition" was used at one time. There is no contemplation that that resource would disappear. We understand it is a clearly necessary resource. We have no idea and no thought in mind that there would be a lessening of that resource at all.

The only discussion was as to whether it might more appropriately be within the supervision of the FBI. We think perhaps the problems in terms of the shift of personnel and the areas that are concerned with that are perhaps insuperable. It may not come about but I want to make clear there was nothing whatsoever in the series of discussions that had in mind the abolition or diminution of any kind of commitment of either resolve or resources.

Senator NICKLES. I appreciate your comment. I think the major thrust of my colleagues is one with the numerous hours of investigation, particularly done by PSI, and Labor is not really following through as far as their practices in the last few years. I alluded this to Mr. Ryan, and it was also brought forth to Secretary Donovan before. He reasserted, as did Mr. Ryan today, that they would both be aggressively pursuing under ERISA and Landrum-Griffin; that they were aggressively pursuing in coordination with Justice to accomplish those means.

The preponderance of testimony before was that was not the case.

I might ask you, in the first place, how long have you been with Justice?

Mr. JENSEN. I have been with the Justice Department since last April. Mr. Margolis has been there during the whole period of time that the Organized Crime Strike Force has had this responsibility. So he is more familiar with it. But I am also familiar with exactly what you addressed and one of the problems, of course, is as you look at the problems and identify them, I think you have to put it in a dynamic kind of view, and the dynamic is that we have seriously improved the ability to communicate and the allocation of our resources. We are at a stage now where some of the problems that were addressed in the past, we feel, have been resolved. No one can be complacent where they are, and you have to continually look at it. But we think we have moved forward and we now have a situation where the flow of information, the actual carrying out of the investigative responsibility by the Department of Labor and their sharing their information and participating with the Strike Force is now at a high level of cooperation. We think we have arrived at a level of where those kinds of blockages have been resolved and we are becoming very productive in this area.

Senator NICKLES. Mr. Margolis, you have been head of the Organized Crime Strike Force for how long?

Mr. MARGOLIS. Three years.

Senator NICKLES. How many people do you have working in that area?

Mr. MARGOLIS. We have 147 attorneys who work for the Criminal Division.

Senator NICKLES. Is that under the FBI?

Mr. MARGOLIS. No. Just the attorneys that work for main Justice. We have attorneys from every Federal investigative agency as well as some State and local investigative agencies and, on occasion, local district attorney offices. And, for instance, if the case warrants, we can call upon all the resources of the FBI, as in the UNIRAC case you were talking about. But the attorneys are 147 spread in 26 cities around the country.

Senator NICKLES. As part of the strike force?

Mr. MARGOLIS. Yes, sir.

Senator NICKLES. What kind of cooperation did you find over the past 3 years? Have you seen an improvement over the past 3 years from the Labor Department? Did you feel you were getting any cooperation a couple of years ago? Allegations have been made that there had not been much. Can you give us some insight?

Mr. MARGOLIS. I will try. First of all, I will make a distinction. A lot of the allegations that have been made have nothing to do with the organized crime program and we had nothing to do with them. What I have noticed, and I think the Senate deserves a lot of credit for this, is since the passage of the IG bill, where the Labor Department has had to dedicate approximately 85 investigators to the organized crime program, there has been a magnificent improvement. Furthermore, in the last year or so, going beyond that, our dealings with Solicitor Ryan and his staff—we meet on a regular basis, his people and my people—the flow of information has been excellent. I have been at Justice for 17 years and things have never been better.

Senator NICKLES. You probably see Mr. Dotson and that side quite often. Is that correct?

Mr. MARGOLIS. Not anywhere near as much as we do with the IG's office. If you will recall, the U.S. attorneys have a great deal of jurisdiction in the labor law area and handle many of them. In terms of Labor prosecutions, we primarily work with the IG's office from the Labor Department and, of course, the FBI even to a greater extent.

Senator NICKLES. Do you actually see some progress?

But just the idea of the inactivity. We would like to see that cleaned up as rapidly as possible. We have not seen that type of action happening in the past and we have a new administration. We do have a new Secretary and Attorney General and Solicitor, and IG people, and we are hoping to see some results. We want to help you in that area either through oversight or legislation.

There was a reason for putting that last section in, and we had people say, yes, Labor basically has the authority to enforce various sections of Landrum-Griffin and ERISA, but they do not do anything. There seems to be a lot of things falling between the cracks at Justice and Labor. I know the intent of that last section which was basically a clarification of saying both, we want the job done, yes, and that is what we are looking for.

Mr. MARGOLIS. Senator, I think the legislation on that point was directed at activities and attitudes that were well in place and which PSI brought out 4 years ago. Since the formation of the IG's office in the last 2 or 3 years, I think the present situation gives us flexibility, especially with the IG's office being there. We do not have the problems of IG's being called off to the union elections, to monitor union elections and pulled away from investigations.

Senator NICKLES. Mr. Jensen, I appreciate the input you have given and also for clearing up your recommendations. We hope that our subcommittee can continue to work with Justice and Labor and PSI; and we would like to do that in a very short period of time. We have put a great deal of work into legislation and, hopefully, we can come up with a vehicle that will be receptive to all concerned and be able to accomplish the goals we want to. We would like to eliminate the crime and corruption that has been involved and protect the assets and dues, et cetera, of the millions of workers throughout this country.

I would like to keep the record open and submit additional questions, hopefully to delineate between Labor and Justice and various factions, to make sure we do not have anything fall between the cracks.

Mr. JENSEN. We would respond to any questions that the committee would have. We do stand ready to work with the staff and with the committee to see that this bill gets moved expeditiously. We are in favor of it. We would like to move it.

Senator NICKLES. We appreciate and share that concern. The full committee is scheduled to have a markup on the longshore bill, S. 1182, this coming Tuesday, which also relates to some extent to this type of legislation. If we get the legislation finalized, we would like to have markup on this bill at that time. Certainly before the February recess.

We appreciate your assistance in that regard. We will keep the record open, and the subcommittee is adjourned.

[Whereupon, at 12:30 p.m., the subcommittee adjourned, subject to the call of the Chair.].

○